

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3596 OF 2018

1. Amar s/o Marutirao Naikwade,
Age : 37 years, Occu : Social
worker and Politician, R/o Vipranagar,
Peth, Beed, Tal. Dist. Beed
2. Samrat Singh s/o Bhagat Singh
Chavan, Age : 45 years, Occu :
Social Worker and Politician,
R/o Hiralal Chowk, Sal Galli,
Beed, Tal., Dist : Beed
3. Ramesh s/o Ambadas Chavhan,
Age : 40 years, Occu : Social
Worker and Politician, R/o :
Dnyaneshwar Colony,
Behind Government I.T.I.
College, Beed, Tal. Dist. Beed
4. Ranjit s/o Devidas Bansode,
Age : 30 years, Occu : Social
Worker and Politician, R/o :
Sant Namdeo Nagar,
Dhanora Nagar, Beed.
Tal., Dist. Beed
5. Prabhakar s/o Jagannath Popale,
Age : 40 years, Occu: Social
Worker and Politician, R/o :
Kranti Nagar, Nagar Road, Beed,
Tal., Dist. Beed
6. Hashmi Idris Vakil Mohammad,
Age : 43 years, Occu : Social
Worker and Politician, R/o Navi
Bhaji Mandi, Beed, Tal.,Dist.Beed
7. Yuvraj s/o Rajendra Jagtap,
Age : 32 years, Occu: Social
Worker and Politician, R/o :
Datta Nagar, K.S.K. College
Road, Beed, Tal., Dist. Beed

8. Sayyad Farukh Ali Sayyad
Nusrat Ali, Age : 47 years,
Occu : Social Worker and Politician
R/o Shehenshah Nagar, Beed
9. Hemant s/o Ravindra Kshirsagar,
Age : 34 years, occu : Social
Worker and Politician, R/o: Nagar
Road, Beed, Tal.Dist. Beed .. Petitioners

versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai, - 32
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The District Collector, Beed
4. The Chief Officer,
Municipal Council, Beed
5. Ganesh s/o Laxmanrao Waghmare,
Age : 52 years, Occu : Business,
R/o Rajuri Ves, Beed, Basirganj,
Tal., Dist. Beed. .. Respondents

Mr. V. D. Sapkal, Advocate i/b Mr Sayyed Tauseef Yaseen, Advocate
for petitioners

Mr. A. B. Girase, Government Pleader for respondents No.1 to 3

Mr. S. D. Kaldate, Advocate for respondent No. 4

Mr. P. M. Shah, senior Advocate i/b Mr G. K. Naik Thigle and Mr.
D. D. Deshmukh, Advocates for respondent No. 5

CORAM: SUNIL P. DESHMUKH, J.

JUDGMENT RESERVED ON : 06-08-2018
JUDGMENT PRONOUNCED ON : 31-10-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. Petitioners had initially sought writ of certiorari and/ or orders or directions or appropriate writ quashing show cause notices dated 28-03-2018 annexed to writ petition as Exhibit "A" collectively. Subsequently, writ petition had been amended and similar writ had also been sought quashing order dated 18-05-2018 passed by Honourable State Minister-the authority, Urban Development Department, Mantralaya, Mumbai, annexed to writ petition as Exhibit "S".

3. Show cause notices dated 28-03-2018 had been issued to petitioners no. 1 to 8 pursuant to section 42 and to petitioner no. 9 pursuant to sections 55A and 55B of the Maharashtra Municipal Council, Nagar Panchayat and Municipal Township Act, 1965 (hereinafter referred to as "The MC Act") seeking their explanation as to why they should not be disqualified from being councillors for a period of five years pursuant to section 42 and from being vice president for six years pursuant to sections 55A and 55B of the MC Act, as Mr. Ganesh Laxman Waghmare has complained of

disgraceful acts and misconduct against them, stating that on 27-07-2017 (27-06-2017) garbage and sewage had been thrown in president's cabin, ante-chamber, on table and chairs. Slogans had been given by them against the president; employees of municipal council had been threatened by petitioners by interfering with discharge of their public/official duty and as such, charge-sheet accordingly has been filed against them under sections 143, 353, 341, 269 and 270 of Indian Penal Code and under section 3 of the Prevention of Damage to Public Property Act, 1984; they were arrested on 27-06-2017 and the matter is *sub-judice* before the Chief Judicial Magistrate, Beed; the district collector has given a report finding substance suggesting action.

It was, thus, considered, *prima facie*, petitioners appear to be responsible and their acts appear to be unbecoming of posts of councillor and vice president of the municipal council and why should they be not disqualified for serious misconduct taking into account aforesaid aspects.

They were directed to submit their reply to the notice within a period of fifteen days from the date of receipt of notice, warning that failure to submit reply within stipulated period would be deemed to consider that petitioners do not have any explanation to offer and appropriate action would be taken. Show cause notice refers to that a copy of report of collector had been enclosed.

4. Petitioners upon receipt of aforesaid notice have filed present writ petition seeking writ of certiorari as referred to above, contending that election to the post of president of the municipal council, Beed had taken place in 2016 and that Mr Bharatbhushan Kshirsagar had been president of municipal council, Beed for over 30 years. Him being from National Congress Party, was interested to have vice president elected from his own party. He had defaulted holding general body meeting on scheduled date requiring direction to collector under writ petition bearing no. 404 of 2017 preferred by petitioner no. 1 before this court, wherein there had been a direction on 12-01-2017 to the collector to hold meeting for the purpose of election of vice president and accordingly in the meeting so held, petitioner no.9 had been elected as vice president.

5. It is contended, since beginning, petitioners had been sensing that the president had been ill-administrating the municipal council giving rise to numerous complaints against him. The president is under statutory obligations to carry out several functions including holding of meetings and him being defaulting on the same, gave rise to complaints against him.

6. Petitioners claim, for there being complaints against president, he also had been entertaining grudge against them and vice president having been elected from outside his party rankled with him.

7. It is submitted, there had been requests to hold meetings on various important subjects including for scientific disposal of solid waste. According to petitioners, shockingly requests had been responded to stating that issues have already been discussed and decisions have been taken and, as such, meetings are not required.

8. Petitioners contend that not a single meeting of standing committee or general body during the period November, 2016 to June, 2017 had been held. Petitioner no. 1 has been accordingly informed by municipal council.

9. Besides aforesaid, petitioners submit, the president had been covering up erring officials of municipal council who were found guilty in enquiry and consequently action against some of them was required to be taken. However, the president had not only been non-receptive to the petitioner's request but had also challenged a meeting being held through intervention of collector.

10. The petitioners contend that councillors, petitioners and several authorities had been urging the president of municipal council to move and act for maintaining city clean and to have proper arrangement for disposal of solid waste. There had been cold response from the president. The petitioners had made several representations to district collector for disposal of accumulated

waste in the city and about non completion of tender process for cleaning of *nallah* and streets in the city. The petitioners as well as authorities had lodged complaints in this respect. The district collector taking note of aforesaid, had sought compliance from the chief officer of municipal council. It has been referred to the the Maharashtra State Road Transport Corporation as well as district court, Beed had also requested for proper disposal of accumulated waste in the city and had urged to implement " स्वच्छ भारत अभियान ". In absence of meeting neither extension to the agency collecting waste from household could be granted nor new tenders could be floated.

11. The district collector, Beed had been concerned as municipal council had developed cold feet to implement the programme for control of *dengue* in the city and there had been increase in *dengue* patients.

12. Petitioners contend that since there had been no improvement at all, for scientific disposal of solid waste, cleanliness in the city and control of open-drains and the municipal council under command of president had been turning *Nelson's* eye to the problems and had been unmoved by public outcry and flak and had been casual in approach in resolving the issues, public discontent had been bursting at seams. Some persons had symbolically dumped waste on the chair of the president to draw his attention to

grave and serious issues for taking up immediate measures. Petitioners purport to refer to incident dated 27-06-2017. Newspaper cutting about the incident is annexed to writ petition at Exhibit – N.

13. It is submitted, the incident is being imputed to the petitioners. Criminal action had been caused to be set in motion against them through an employee at the behest of the municipal council. As this attempt to incriminate the petitioners in the incident had not been yielding desired produce, yet another strategy had been developed by the president and a complaint had been managed to be lodged through a stooge in November, 2017 about the incident of June, 2017.

14. With reference to aforesaid complaint by Ganesh Laxman Waghmare, the petitioners were purportedly issued show cause notices dated 28-03-2018, as to why they shall not be disqualified, being guilty of disgraceful conduct pursuant to the report of the collector.

15. Show cause notice refers to appendage of the collector's report. Some of the petitioners had made endorsement while acknowledging receipt of show cause notice that report of the collector is not appended to notice and, as such, had not received the report.

16. According to petitioners, report of the district collector had been *ex parte* and had been brought about with a view to invalidate their votes in the elections of legislative council which were in the offing.

17. It is contended that under chapters IX and IX-A of the Constitution of India, autonomy is conferred on the local self governments. Municipal council has a constitutional status and various powers under Article 243-B have been conferred on it. The show cause notice gives an indication of destruction of such object under the constitution. An elected local self government official would not be removed in violation of provisions of Article 21 of the Constitution of India and/or for that matter, in contravention of the procedure prescribed by law much less under casual and manipulative resorts goaded by ulterior purpose. Show cause notices being one such attempt to undermine autonomy of local self government and the same being incompatible with the constitutional intent, court would intervene and intercept the action.

18. It is being contended that while the provisions under sections 42 and 55A and 55B empower the state government to take action either *suo-motu* or on the recommendation of the council, whereas in present case the action has been taken by the State Government based on a complaint which was enquired into by the collector without hearing the petitioners, condemning them as guilty.

19. Petitioners condemn the notice as a mere formality, claiming as guilt of the petitioners has already been confirmed under the report of the collector. Report of the collector is not sustainable being in violation of principles of natural justice and ought not to have formed basis of show cause notice. Hearing to petitioners had been imperative before submission of report on a complaint for disqualification. It is alleged that the action of the state government is driven by the president who has been political rival of the petitioners holding grudge against them. Petitioners have not been provided with the copy of complaint or that of report of the collector. Notice has been issued without application of mind. The show cause notices are unjust and unreasonable and is in violation of Article 14 of the Constitution of India. As such, the petitioners have prayed for quashing said show cause notices and in the alternative, not to implement and give effect to said show cause notice.

20. Initially, writ petition had been placed before Division Bench of this court, which had issued notice on 09-04-2018, making it returnable on 13-04-2018 and learned assistant government pleader had waived service of notice for respondents no.1 to 3. Petitioners were to serve other respondents no. 4 and 5 additionally by alternate mode of service.

21. While the matter had been on board before division bench on 13-04-2018, the same, at the request of parties had been adjourned to 20-04-2018 and the court had directed till next date of hearing, respondent no. 1 shall not take final decision on the basis of notice dated 28-03-2018 and in the meantime, it was open for the respondents to file reply.

22. Meanwhile, on 11-04-2018, Hemant Kshirsagar – petitioner no. 9 had in response to show cause notice, made a representation submitting that notice dated 28-03-2018 is premature and that the same had been challenged in high court, Aurangabad bench and had also referred to that for want of supply of report and other material, petitioners are not in a position to file reply and had asked for one month's period to file reply. Similar representations were made by Prabhakar Popale and seven other councillors on the very day. On 06-04-2018, Mr Momin Azaroddin Momin Naimuddin had filed reply, demanding supply of copies of complaint filed by Ganesh Waghmare along with copies of documents annexed by him with the complaint.

23. On 19-04-2018, desk officer, Urban Development Department, Mantralaya, Mumbai, had issued a notice to petitioners, stating that hearing before respondent no. 1 is scheduled on 24-04-2018.

24. On 20-04-2018, error crept in suggesting reply by respondents in order dated 13-04-2018 had been corrected as reply by petitioners and fresh writ was caused to be issued and on the personal ground of learned counsel for petitioners, the matter was adjourned to 26-04-2018 and ad-interim relief granted earlier had been continued till next date of hearing.

25. Petitioners were served with notice dated 19-04-2018 by desk officer on 21-04-2018. Petitioners had made endorsements on the same to similar effect as in applications dated 11-04-2018. Petitioners contend that their request to supply copies of complaints and the reports had not been heeded.

26. On 24-04-2018, an application / representation is given by petitioners. It was claimed in the same that show cause notice was abuse of process of law, was issued without jurisdiction and was mere a formality as the guilt of the councillors was already confirmed pursuant to illegal report by the collector referred to in the notice. The notice was challenged before the high court under writ petition bearing no. 3596 of 2018; on 13-04-2018 time was sought by respondents and the matter was posted on 20-04-2018 and the respondents were directed not to take any final decision in pursuance of show cause notice. On 20-04-2018, the matter was posted to 26-04-2018 and earlier directions had been continued. Despite aforesaid, surprisingly, notice has been issued directing

petitioners to remain present before the authority on 24-04-2018 for hearing. It had been further referred to that intention is not to disobey proceedings before the authority. Proceeding before the authority was requested to be adjourned till final disposal of writ petition in high court.

27. Respondent no. 5 – Ganesh Laxmanrao Waghmare, complainant has submitted affidavit-in-reply on 24-04-2018 stating that, the petition is without any substance and deserves to be dismissed; contentions in the petition are denied; that petitioners are not entitled to any relief. Petition is premature, suppression of fact of order in writ petition no. 880 of 2018 filed at his instance is alleged; the vice president – petitioner no. 9 along with petitioners no.1 to 8 had damaged property of municipal council and obstructed the functioning of local body. Disgraceful act of the petitioners on 27-06-2017 had invited proceedings against them punishable under provisions of the Indian Penal Code read with section 3 of the Prevention of Damage to Public Property Act. Chief officer, municipal council had made a report on 31-08-2017 recommending action against the concerned pursuant to sections 42 and 44 of the MC Act.

He has contended that granting opportunity of hearing before show cause notice is not contemplated. Omission to hold meetings alleged by petitioners has nothing to do with the present matter

and it is an attempt to digress from the allegations in the application. Petitioners are purporting to raise dispute of facts. Collector's report had been called before issuance of show cause notice and certified copy of report would also demonstrate that he has scrutinized documents and has verified the same. It was thus requested to dismiss the writ petition.

28. Along with the reply, respondent no. 5 had appended order dated 25-01-2018 passed in writ petition no. 880 of 2018 at exhibit R-1.

29. On 26-04-2018, the matter was adjourned to 03-05-2018 as petitioners were to file their rejoinder affidavit. Ad-interim relief granted had been continued till next date.

30. Rejoinder to aforesaid affidavit of respondent no.5 had been filed by the petitioners on 27-04-2018. Under the rejoinder, it had been claimed that order dated 21-05-2018 in writ petition no. 880 of 2018 had been passed without issuing notice to them. Petitioners had no knowledge about the same. Knowledge sought to be imputed about the order is a fallacious contention. The allegations are besides the show cause notice and are of no relevance. Threats to staff members by some of the petitioners is a wild allegation and are without any material in support and are made with a view to prejudice the court.

It is purportedly pointed out that while in the FIR, apart from names of petitioners no. 1, 4, 8 and 9, names of 15 to 20 other councillors are mentioned, yet, show cause notices have been issued only against 10 municipal councillors belonging to the same party with a view to disqualify them from participating in elections to be held on 21-05-2018 to the Maharashtra Legislative Council seats from electoral college of local bodies. It is contended that although, the incident had occurred in June, 2017, complaint was lodged belatedly and action is taken with aforesaid intention; report of the chief officer dated 31-08-2017 has been produced without making full disclosures as to its contents which recommends appropriate proceedings against the president as well as certain councillors. Any enquiry which is conducted *ex parte* or behind the back of a party cannot be used and relied upon and that any reply to the show cause notice would be an empty formality. The report annexed to the affidavit in reply by respondent no.5 at exhibit R-4, is contended to contain back dated endorsement to the effect that present petitioners have refused to accept the report being served along with show cause notice. It is purported to be pointed out that petitioners had made endorsement that copies of the enquiry report though mentioned in the show cause notice had not been served upon them and that endorsement is not controverted by the person making service. Endorsement about

refusal to accept the report ought to be on show cause notice and not on the report. The action is *malafide*.

It is being referred to that on notice dated 19-04-2018 endorsements had been made about non-furnishing of documents mentioned and relied on in the show cause notice. It is contended that adjournment had been solicited on 24-04-2018 under an application to the Hon'ble Minister, *inter alia*, for the matter had been *sub-judice*.

31. Petitioners have contended that their apprehension turned out to be true as order dated 18-05-2018 disqualifying them under sections 42 and 55A and 55B of the MC Act came to be served on petitioner no. 8 around 7.00 p.m. on 19-05-2018 and other petitioners, however, neither communicated nor were served with the same immediately.

32. Petitioners had moved civil applications respectively bearing no. 6358 of 2018 and 6354 of 2018 for amendment to writ petition and interim relief. Applications were placed before vacation judge on 23-05-2018. Civil application bearing no. 6354 of 2018 had been allowed and disposed of on the very day.

33. The petitioners had requested in civil application 6358 of 2018 to stay effect, execution, implementation and operation of the disqualification order dated 18-05-2018. The Hon'ble vacation

judge had stayed the execution, operation and implementation of order dated 18-05-2018, observing in said civil application in paragraph no. 17 under order dated 23-05-2018, thus:

" 17. Considering all these aspects, in my considered view, when already interim relief was granted to the petitioners and it was extended from time to time, irrespective of the fact whether the Hon'ble Minister was justified in passing the final order disqualifying the petitioners, the operation and execution of the impugned order deserves to be stayed for a reasonable time so as to enable the regular Court to hear the matter. Hence I passing the following order:

ORDER

- 1) The execution, operation and implementation of the impugned order passed by the Hon'ble Minister for State, Urban Development Department, Mantralaya dated 18.05.2018 shall remain stayed till 06.06.2018. "*

The same continued from time to time during pendency of writ petition.

34. Impugned order dated 18-05-2018 refers to that Mr. Ganesh Laxman Waghmare had requested and solicited action pursuant to sections 55A and 55B and section 42 of the MC Act against petitioners and one Mr Momim Azroddin Momin Naimuddin for disgraceful acts and misconduct and dereliction of duty and in respect of his complaint/application the high court had directed to complete the proceedings within a period of three months, by observing principles of natural justice and accordingly it was necessary to take a decision by 23-04-2018.

It has been referred to that taking into account reports of chief officer, municipal council, Beed, district collector, Beed, copy of first information report with city police station, Beed and the aspect that vice president Hemant Kshirsagar and other petitioners having been arrested and sent to judicial custody upto 05-07-2017 and on the same day them having been released on bail and on perusing other documents, it appears that Mr Hemant Kshirsagar, vice president and other nine councillors have displayed disgraceful conduct.

Hemant Kshirsagar had given reply on 11-04-2018, however, had not expressed anything about disgraceful conduct on his part. He had, contended that the show cause notice dated 28-03-2018 is premature and that the same has been challenged in Aurangabad Bench of high court and had asked for a month's time. Representations to similar effect had been given by Prabhakar Popale and seven other councillors.

Momin Azaroddin had on 06-04-2018 filed reply demanding copies of complaint and documents by Ganesh Laxman Waghmare.

35. The order refers to that after verifying all the documents are received by the noticees on the basis of which show cause notice had been given, hearing had been scheduled again on 24-04-2018. At that time, Hemant Kshirsagar and other eight councillors had

given a written representation. Written and oral submissions advanced had been considered at the time of final hearing concluded on 24-04-2018. Decision had been rendered on 18-05-2018.

36. It has been considered by the Authority-the State Minister that first information report lodged by Santosh Kale, peon of municipal council, is the main evidence. According to first information report, personal assistant of vice president Mr Hemant Kshirsagar had called Mr Santosh Kanade and thereafter Hemant Kshirsagar and others present had, while the president had not been in his cabin and it was closed, had forced said Mr. Kanade to open it on 27-06-2017 at 1.30 p.m. Thereafter, along with private persons they had entered the chamber and thrown garbage and sewage water in the chamber and *ante* chamber of the president and had given slogan "भारत भूषण मुर्दाबाद". Mr Hemant Kshirsagar and other councillors had been arrested on 28-06-2017 and when produced before the chief judicial magistrate, they had been sent to judicial custody till 05-07-2017 and thereafter they had been released on bail. Upon investigation by police, charge sheet against the concerned for having committed offences punishable under section 143, 353, 341, 269 and 270 of Indian Penal Code as also under section 3 of the Prevention of Damage to Public Property Act, 1984 had been filed and as such it depicts that there has been mis-demeanour by the concerned.

37. It was observed by the authority that despite opportunity to give reply, save Mr Azaroddin, none of the persons at any time denied their disgraceful act / misconduct nor have they placed evidence in defence before the authority.

38. It has been considered by the authority, Mr Hemant Kshirsagar and nine other councillors had been aware that the high court had in writ petition no.880 of 2018 directed to take decision by 23-04-2018, however, in spite of that and despite being present during hearing, they had not filed any evidence or material and had only stated that the notice dated 28-03-2018 had been challenged in the high court.

39. It is observed, Mr Hemant Kshirsagar and other nine councillors are guilty of disgraceful conduct which is a matter indisputably proved. They ought to have placed their grievance before the president by adopting democratic course, however, instead had acted in furtherance of pre-meditated conspiracy, had entered president's cabin and dumped garbage and sewage water and such a conduct is shameful act. Action had been pre-planned and was for publicity as can be seen from the local newspaper placed before the authority.

40. It is observed by authority, it is being proved that shree Hemant Kshirsagar and other nine councillors have acted and

conducted themselves in disgraceful / scandalous manner and are thus liable for action pursuant to sections 42 and 55A and 55B of the MC Act.

41. It has been referred to that the high court on 25-01-2018 had directed disposal of proceedings within a period of three months by following the principles of natural justice and in accordance with law and had further directed that compliance be taken care of. In writ petition no. 3596 (instant writ petition), the high court had under interim order dated 13-04-2018 directed not to take any final decision. Operation of said interim order had been extended from time to time which continued upto 03-05-2018. Thereafter, it does not appear that operation of interim order had been extended. Under the circumstances, in order to avoid contempt of order of the court passed in writ petition no.880 of 2018, it was considered expedient to take final decision.

42. Accordingly authority has under impugned order dated 18-05-2018 declared Mr Hemant Kshirsagar, vice president of municipal council, Beed pursuant to section 55-A and 55-B of the MC Act, to have been disqualified for the remainder of the term and he had further been declared to be disqualified for becoming member of municipal council for a period of six years from said date. Rest of the councillors were held ineligible and were disqualified for a period of five years for holding said posts or for

being member of any other local authority, and further directed to issue show cause notice forthwith pursuant to section 42 of the MC Act to Mr Shaikh Mohammad Khaled.

43. Petitioners have carried out amendment to the petition, pointing out that during the pendency of writ petition, order dated 18-05-2018 disqualifying the petitioners had been passed. It is contended that the same is contrary to the directions of the Hon'ble High Court which had restrained Honourable State Minister-the authority from taking final decision in respect of show cause notice dated 28-03-2018 till next date of hearing. Next date of hearing has been explained by the court, to mean that till such date, whereon subsequent order is passed by the court recalling, vacating or modifying the order and refer to *Vishnu Dutt Sharma V. Regional Joint Director Education AIR 2001 Allahabad 165*, to contend that time bound stay order has the same effect of order till further orders of the court and the same operates till the order is recalled, modified or vacated by subsequent orders. It is contended that while in the present matter, the order had not been recalled, modified or vacated nor any hearing had taken place on 03-05-2018 and the matter had not been listed as the court had not been available, interim protection ought to be deemed to continue till next date of hearing. Honourable State Minister-the authority ought not to have taken disadvantage of the situation by passing adverse orders against the petitioners.

44. It is being adverted to that the petitioners had already specifically pleaded in the writ petition that the attempt to disqualify the petitioners is made with an ulterior object of depriving them to cast their votes in the biennial election to seat in Maharashtra Legislative Council from local authorities constituencies while the petitioners had been opposing the candidate of ruling party. It is purported to be pointed out that they already had grave apprehension that the respondent State would disqualify them with an ulterior motive, *malafide* and playing politics and impugned order is in utter disregard of principles of natural justice and is a clear case of abuse of process of law.

45. Reference to *State of Punjab V. Baldev Singh (1999) 6 SCC 172* is being made, to contend that it is imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising powers for removing elected office bearer, as such an action has very serious repercussion.

46. *G. Sadanandan V. State of Kerala (AIR 1966 SC 1925)* has been referred to, to contend that if all the safeguards provided under the statute are not observed, order having serious consequences is passed, without application of mind, under a casual approach, would be characterised as *malafide* and would be liable to be quashed.

47. Impugned show cause notice had been issued on the basis of report of enquiry by the collector, which had been prepared without issuing notice to the petitioners and yet had recommended action against them. Said report had been contrary to law laid down by supreme court in the case of *State of Bihar Vs. Lal Krishna Advani and others* reported in (2003) 8 SCC 361 and *Lakshmikant Tukaram Choudhary V. The State of Maharashtra and others* decided by this court on 04-08-2005 in writ petition no. 4762 of 2005.

48. Since show cause notice itself has been defective based on a defective report, impugned order dated 18-05-2018 disqualifying them is bad in law. While the Hon'ble Minister had been informed about restraint on him to pass final order and while the petitioners had requested to adjourn the hearing till the decision of the writ petition, the Hon'ble Minister had neither passed any order on their application nor had informed that he would proceed with the appeal. Petitioners complain that they were not heard before passing impugned order dated 18-05-2018. It is being submitted that the Hon'ble Minister has incorrectly referred to that he had gone through the entire record and heard all the concerned. The Hon'ble Minister had accepted the allegations in the complaint filed by Shri Ganesh Laxman Waghmare as gospel and heavily relied on the report of the collector, with a view to disqualify the petitioners. Reference by Hon'ble Minister that High Court did not continue interim relief, is an observation besides factual position as interim

relief by the High Court was to continue till further hearing meaning that until the same is discontinued, modified or vacated.

49. The petitioners contended that order dated 18-05-2018 disqualifying them, is *per se* bad, contemptuous of directions issued by the High Court on 13-04-2018.

50. A ground is taken by the petitioners that supreme court has held, it is incumbent on the commission to give an opportunity to a person before any comment is made or opinion is expressed which is likely to prejudicially affect that person and also that failure to comply with the principles of natural justice renders the action *non-est*. The supreme court has further held that it is not necessary for a person to wait till certain action is initiated by the Government considering the report of the Enquiry Commission where the observation made by the commission are such which militate against the reputation of a person without giving any opportunity to such a person to explain his conduct, referring to *State of Bihar V. Lal Krishna Advani and others* (supra).

51. A further ground has been that while division bench of this court has held that the committee constituted by the Government will enquire into the matters concerning the municipal administration, there was an obligation to act fairly and the committee was required to hear the petitioners or any person against whom the enquiry was sought to be conducted in relation to

the municipal administration. Having not so done, the entire proceedings regarding the enquiry stood vitiated and the report cannot be termed to be legally enforceable or acted upon. Government's decision to accept the report was not preceded by any hearing at any point of time. Relying on *Lakshmikant Tukaram Choudhary V. The State of Maharashtra and others* (supra) decided on 04-08-2005 in writ petition no. 4762 of 2005, it is contended that the order passed by the Hon'ble Minister suffers total non-application of mind and the same is not based on true and correct facts and circumstances. Same is *sans* reasoning and order has been passed under political influence and is politically motivated. Impugned order is contrary to provisions of sections 55A and 55B read with section 42 of the M.C. Act, 1965 as well as Article 14 read with Article 243 and 243(Z) of the Constitution of India. As such, it was prayed to quash the order dated 18-05-2018.

52. Respondent no. 4 - the chief officer had filed his affidavit in reply to the writ petition, stating that he had served the notice along with report of the collector and report about the same bears signature of office superintendent of office of municipal council. It is being purportedly pointed out that save petitioners no. 1 and 3, none of the petitioners had any grievance in respect of service of report and it is contended that objection with regard to the same are an afterthought. Rest of the contents as well were purportedly denied by respondent no.4.

53. To respondent no. 4's affidavit in reply rejoinder has been filed on behalf of the petitioners contending that affidavit in reply contains incorrect and distorted statements. Contentions with regard to service of notice and report by collector are not correct. It is contended that the petitioners have not received report of the chief officer or of the collector.

It is contended that report of the collector is mere reproduction of report of the chief officer of the municipal council. The collector had failed to apply his independent mind. The petitioners have been disqualified *malafide* and for political purpose. The complaint has been lodged by Ganesh Laxman Waghmare, happens to be polling agent of Bhartiya Janata Party candidate. It is being purportedly pointed out that while the complaints against the president had been made by petitioners in January, 2017 seeking his disqualification, the same had not been processed, however, the State had proceeded to entertain application of Mr. Waghmare which had been much later in point of time. It is being contended that president Bharatbhushan Kshirsagar is acting hand in gloves with the ruling party.

54. Respondent No. 5 on 20-06-2018 filed additional affidavit in reply, submitting that contentions and arguments, which are referred to for the first time in affidavit in rejoinder, cannot be

taken into account as pleadings in rejoinder cannot be considered. It is submitted that contention of the petitioners regarding deemed continuation of interim relief is without any basis. No effort to move vacation court had been made. Documents annexed to the purported additional rejoinder were not intimated or served on him. According to him, complaint is part of record and he had annexed paper book of writ petition No. 880 of 2018. It is claimed that petitioners were served with all material including report, however, in order to escape consequences of disgraceful conduct, untenable grounds have been raised. It is contended that there is no case for interference with, in exercise of Article 226 of the Constitution of India for judicial review. Scope of judicial review is restricted. Petitioners have asserted and endorsed the act of disgraceful conduct and the same is apparent from material on record. Proceedings by petitioners against president or its rejection by the state has no relation with the present matter. The scope of inquiry narrows down as to whether such an act amounts to disgraceful conduct or not. Respondent No. 5 contends that said act indeed is disgraceful conduct apart from being a criminal offence amenable to punitive action under penal code and other enactments. Petition amounts to abuse of process of law.

55. Affidavit in reply has been filed by one Milind Bhalchandra Sawant, district administrative officer, collector office, Beed, for and on behalf respondents no. 1 to 3 denying all the contentions in the

writ petition. It is submitted that complainant had placed on record certain documents along with copy of FIR bearing C.R. no. 224 of 2017, copy of charge-sheet including copies of newspapers and the compact disc of video clip.

It is submitted, pursuant to procedure prescribed in circular dated 01-11-1989, the State Government had directed the collector, Beed to submit information in prescribed format. On the basis of record available with the State Government, show cause notice had been issued.

Since the time limit was fixed by High Court for conclusion of the proceedings and no extension being granted by the High Court, the Minister after going through the record placed before him has heard the parties and passed the order. Petitioners had intentionally avoided to submit their say on merit, and petition is liable to be dismissed.

56. Mr. V. D. Sapkal, learned advocate appearing for the petitioners, purports to refer to fundamentals contended to be involved in the matter as well as other legal and factual aspects and takes the court through various events taking place throughout the proceedings. Besides, section 44 of the MC Act, according to him would show that there is a forum available before collector and not before the minister and the same could not be bye-passed and thus impugned order is without jurisdiction.

57. He refers to section 44 of the MC Act and draws attention to sub section (1) Sub clause (a) thereof stipulates that a councillor shall be disqualified to hold office, if at any time during his term is or becomes, subject to any disqualification specified in section 16 of the MC Act save the exception thereunder. Section 16 of the MC Act in turn enumerates under sub section (1) clause (b) that a person, removed from office under section 42 and six years have not elapsed from the date of removal unless he is relieved by State Government from disqualification shall not be qualified to become a councillor. Similar is the provision under sub clause (ba) for president and vice president, save, that the period of disqualification would be as provided under section 55B. He submits that having regard to provisions under section 44 (3) of the MC Act, it is collector, who is empowered to disqualify councillors and until his decision a councillor would not be deemed to have ceased to hold office. He, therefore, contends that the impugned order is without jurisdiction and authority.

58. Mr. Sapkal, purports to impress upon that lodging of so called complaint by respondent No. 5, according to his instructions is by a stooge and factually it is the president of the municipal council, Beed, who is acting from behind him. He submits, respondent No. 5 is husband of a councillor from a political party from which the president comes and that there have been series of allegations, complaints and applications made against president for inept

administration and for dearth of movement and for taking up the administration casually, neglecting his duties and as well for non exercise of powers where it has been imperative, tending to abuse process of law. Complaint against the petitioners has been orchestrated and is a retaliatory reaction to complaints against the president with eruption of the incident dated 27th June, 2017.

59. He submits that there had been worsening situation of solid waste disposal in Beed city and the municipal authorities, especially its elected head playing possum to the aggravated problems posing threat to hygiene and perpetuating unhygienic living conditions in the city, mounting unrest drifted to symbolization in the incident dated 27th June, 2017 and a score has been sought to be settled under political machinations from behind respondent No. 5, who happens to be a BJP party worker and had been even a polling agent for that party.

60. Referring to "*Keshav Shankar Ekbote V/s State of Maharashtra and Others*" reported in 2006 (1) *Mh.L.J* 292, it is being submitted that a person who seeks disqualification of petitioners shall discharge evidential burden of establishing facts that invoke the disqualification. He submits that in the present matter, hue and cry is being made of the newspaper report at Exhibit-N, however, the petitioners have not at all accepted alleged guilt nor have they referred to Exhibit-N for said purpose. It was plainly being referred

to that people were agitating since were being vexed and harassed by inaction of the municipal administration. It was with a view to show that news items being reported in respect of anarchy in administering municipal functions.

61. He submits that disqualification of the petitioners had been mooted in these circumstances and while elections to Maharashtra Legislative Council seat had fallen due in May, 2018, motion had been moved to faster gears with a view to see that petitioners would be deprived of voting in the same, by disqualifying them. He further points out that ultimately this engineered exercise has not been proved to be fruitful for the *malafide* disqualification incurred under the orders was not able to remove the petitioners as voters to the election to Maharashtra Legislative Council seat.

62. Mr. Sapkal, submits that show cause notices had been issued on 28th March, 2018, vaguely referring to that collector Beed had apprised the government of misconduct by the councillors and refers to the incident of lodging of First Information Report dated 27th June, 2017, filing of charge sheet and arrest and release of petitioners, and that one Ganesh Laxman Waghmare, (respondent No. 5 herein) had requested the State to initiate action against the petitioners under sections 42 and 55A and 55B of the MC Act. He submits that show cause notices do not make it clear at all as to whether it is a request or a complaint. The show cause notices,

while refer to that a report had been made by collector in pursuance of complaint, neither there had been any reference to the date nor any copy of complaint had accompanied the show cause notices, nor even the date of collector's report nor any observation of the collector had been referred to. While the show cause notice refers to that the collector's report is enclosed, in fact no such copy had been enclosed along with the notice. He submits that at least two of the petitioners had endorsed about non receipt of collector's report along with the notice and serving officer's report makes it evident in respect of others. He submits that in the present matter, petitioners were not served with charges framed and show cause notices had been vague.

63. He submits that as referred to above, no particulars either of collector's report or for that matter complaint by respondent No. 5 had been made available at any point of time to the petitioners either before or with the show cause notices or for that matter even before 24th April, 2018. He submits that it has been very specifically pointed out by the petitioners on number of occasions.

64. Mr. Sapkal, goes on to submit that only ostensibly the show cause notices have been as formality issued, its contents are a pointer to that guilt of the petitioners had already been determined on the report of the collector, which according to him is an *ex parte* report. Show cause notice was an empty formality.

65. He submits that writ petition was filed immediately challenging show cause notices on various grounds. He submits, it is easily discernible that direction in writ petition No. 880 of 2018 has not been referred to in the show cause notices. Neither said writ petition nor order therein had been mentioned in the show cause notice although those were issued purportedly pursuant to directions in writ petition No. 880 of 2018

66. It would be imperative to note that no notice whatsoever of writ petition No. 880 of 2018 had ever been issued to petitioners. The direction in writ petition No. 880 of 2018 had been given, considering the same to be innocuous, unwary of the background in which the writ petition had been filed, a direction had been strategically obtained with view to engineer a predetermined decision. However, there had been a direction to observe principles of natural justice.

67. He submits, during pendency of present writ petition, petitioners had lodged a representation on 11th April, 2018 for supply of copy of complaint and reports of the chief officer and collector along with other documents. In the same, it had been readverted to that along with notices, report of collector as referred to in the notices had not been supplied pointing out that petitioners have approached the court under present writ petition. During pendency of writ petition, at least on three occasions, on 11th April,

2018, 21st April, 2018 and 24th April, 2018 documents filed had been demanded by the petitioners, however, were not provided to the petitioners.

68. He submits that as referred to above, at least on three occasions, it had been made known to the respondents that the petitioners are not in a position to meet with the requirement of submission of explanation for want of knowledge of particulars and material against them. Besides, the petitioners had already challenged show cause notices before high court and that they do not derogate the authority in the process, bearing sufficient reasons for non submission of explanation.

69. He submits that on 13th April, 2018, interim relief after hearing the parties had been granted by high court not to take final decision on show cause notices and said order was being continued from time to time.

70. He submits that while interim order had been passed on 13th April, 2018, advocate for respondent No. 5 had skipped reference to directions under order dated 25th January, 2018 in writ petition No. 880 of 2018 about time limit been prescribed for decision with respect to proceedings pursuant to show cause notices. He submits that the same had been deliberately kept back with a view to avoid possibility of any alteration in the direction. He submits that while specifically a correction pursuant to *pursis* in the order at the

instance of respondent No. 5 had been made, on 20th April, 2018 on that occasion as well, reference to writ petition No. 880 of 2018 and direction thereunder had been avoided rather kept back and for that matter even about such a writ petition having been preferred.

71. He submits that it was only on 24th April, 2018 when reply to writ petition had been served by respondent No. 5, it had surfaced that there has been earlier order passed by division bench in writ petition No. 880 of 2018.

72. Next leg of his submissions is that the notice apparently has been issued on the ground of misconduct, however, action was proposed on the ground of disgraceful conduct.

73. According to learned advocate, therefore, show cause notices were a part of show and only an ostensible compliance of the procedure.

74. He submits that while writ petition had been so pending, a notice had been issued by respondent – State dated 19th April, 2018, served on the petitioners on 21st April, 2018 asking them to remain present on 24th April, 2018 for hearing before Minister. On this notice as well the petitioners had made specific endorsement to the effect that they had not received copy of report and complaint and are not in a position to know particulars of the material against them. He submits, in the scenario, they had filed application on 24th

April, 2018, since petitioners had challenged proceedings on merits before high court, which had been due for hearing, to defer the hearing keeping in view pendency of writ petition and other facts and circumstances. He submits that State had not passed any order on the application nor the petitioners were made aware of that the matter is to be taken up and heard finally. The petitioners were never given to understand after 24th April, 2018 that matter had been posted for passing order while adjournment had been sought. He purports further to point out that this is a date while orders passed by this court were in operation.

75. It is submitted that on 3rd May, 2018, the court hearing present writ petition was not available and for administrative reasons, other courts could not take up the matter for hearing which can be easily seen from the observations as appearing in order dated 11th June, 2018 passed in writ petition No. 4927 of 2018.

76. In the circumstances, while the petitioners, since they were under grave apprehension that this position in all certainty is likely to be taken disadvantage of, had by way of abundant precaution communicated to the authority that interim relief as had been operating would continue to be effective taking into account legal position in this respect. Yet, according to learned advocate an order came to be purportedly passed on 18th May, 2018 with reference to

the event as had taken place on 24th April, 2018 considering that matter having been heard on 24th April, 2018.

77. Learned advocate submits that impugned order dated 18th May, 2018 would evince that the order has been passed on the basis of purported hearing taking place on 24th April, 2018 relying on complaint dated 3rd November, 2017 lodged by respondent No. 5. It also purports to convey that complaint is decided in consonance with principles of natural justice and pursuant to order dated 25th January, 2018 directing to decide the complaint in three months.

78. He submits that approach of *quasi* judicial authority about there being no particular express continuation of interim relief beyond 3rd May, 2018 is suggestive of the authority had been acting not as a *quasi* judicial authority as expected of it. He submits that while such a hue and cry had been raised about direction under writ petition No. 880 of 2018, yet it is discernible that after 3rd May, 2018, authority let a fortnight elapse i.e. to 18th May, 2018 to pass order with a view to preclude opportunity to approach against the impugned order, since 18th May, 2018 was Friday, the impugned order had been served only on one of the petitioners that too around 7.00 p.m. on 19th May, 2018 next day i.e. 20th May, 2018 being Sunday was court holiday. He submits that the things speak for themselves. *Mala fides* are writ large in the process. It was all

strategic and the impugned order is an outcome of predetermination. He submits that observations about having verified that all the material was supplied to the parties concerned, is again a vague observation and does not at all refer to any particulars as to what was the material which had been verified to be with the parties, what was the material made available to the parties and more particularly while it makes reference to representation of the petitioners dated 11th April, 2018, the impugned order does not make reference to that in response to the same any material had ever been supplied to the petitioners.

79. He submits that while the documents, viz., report of Chief Officer, Municipal Council, Beed and other documents were relied on, said documents do not find place in the show cause notice dated 28th March, 2018. The State, in the impugned order dated 18th May, 2018, is appreciative of application dated 11th April, 2018 seeking accommodation with a grievance that copies of documents had not been provided.

80. He further submits that reasoning given in the impugned order dated 18th May, 2018 is first information report lodged by one Santosh Kanade is an evidence and allegations stand proved in police investigation upon filing chargesheet and thus the petitioners are guilty of misconduct. It further mentions that petitioners are guilty of disgraceful conduct without any doubt. Petitioners had

entered into chamber of president, pursuant to a preplanned conspiracy and had incurred disqualification. Same also stands proved through newspaper reports and, as such, petitioners were disqualified citing order dated 25th January, 2018 and non continuation of interim relief in present writ petition.

81. He submits that reasons are very queer that first information report is considered to be foundational evidence and since charge sheet is filed, allegations are deemed to have been proved.

82. He submits that the impugned order and issuance of show cause notices to the petitioners clearly establish that they have only been arraigned and the others against whom also complaint was filed with police, to them neither notice has been served nor any action has been taken against them. This is a clear case of discrimination and the petitioners have been segregated for hostile treatment.

83. The earlier complaints against president were not proceeded with, however, later complaint of respondent No. 5 had been expeditiously undertaken and impugned order dated 18th May, 2018 had been passed.

84. He submits that it is only after elections were over, complaint by the petitioners against the president was purportedly decided exonerating him on flimsy consideration, and orders were passed

without hearing the petitioners giving ample indication of that petitioners have been discriminated and action is *mala fide*.

85. He submits that while according to order passed by high court on 25th January, 2018, in writ petition No. 880 of 2018 period to decide the complaint had expired on 23rd April, 2018 and while interim protection to petitioners granted by this court in present writ petition according to submissions on behalf of the respondents had expired on 3rd May, 2018, yet without seeking extension from the high court, order has been passed much later on 18th May, 2018 just before elections to Member of Legislative Council, glaringly shows underlying engineered exercise.

86. Learned advocate Mr. Sapkal vehemently submits that the impugned show cause notices dated 28th March, 2018 have been issued and the impugned order dated 18th May, 2018 has been passed in gross violation of principles of natural justice. Relying on “*Ravi Yashwant Bhoir V/s District Collector, Raigad and others*”, reported in 2012 (4) SCC 407, he submits that an elected official will not be allowed to be removed without following procedure prescribed by law, adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The court is a custodian of law would not tolerate any such attempt to thwart the institution.

87. Relying on “*Ravi Yashwant Bhoir*” (*supra*) he submits that order having serious consequences is passed without observing

safeguards provided under statute and the same is passed without proper application of mind and in casual manner, same would be characterized as having been passed *mala fide* and, thus, is liable to be quashed.

88. Drawing attention to paragraphs No. 58, 59, 60 and 61 of judgment in the case of “*Ravi Yashwant Bhoir*” (*supra*) as well as judgment of division bench of this court in writ petition No. 4927 of 2018, he submits that there is no substance in the contention that the petitioners would not have *locus standi*.

89. Referring to “*State of Punjab V/s Baldev Singh etc.*” reported in *AIR 1999 SC 2378*, he submits that the court had observed that severe the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed. He submits that since while removal of duly elected member on proved misconduct is a *quasi* judicial proceedings in nature, it is incumbent that principles of natural justice are to be given full play, ensuring its strict compliance, even in absence of any provision. He submits that while elected official in local self government stands on higher pedestal than a government servant, where even a temporary employee cannot be removed for misconduct without holding full-fledged inquiry, an elected office bearer cannot be removed without holding full fledged inquiry.

90. In the case of removal of an elected public representative, a more stringent procedure and standard of proof is required. He, with reference to “*Tarlochan Dev Sharma V/s State of Punjab and Others*” reported in *AIR 2001 SC 2524 = (2001) 6 SCC 260*, submits that removal of an elected office bearer is a serious matter and he shall not be removed unless a clear-cut case is made out. It is not only a statutory right of the elected person, but also of his constituency and electoral college. The authority is not to be guided by extraneous considerations or should not come under any political pressure. He further submits that elected official is accountable to its electorate, his removal has serious repercussions and takes away right of people of the constituency to have their representation through him.

91. From “*Tarlochan Dev Sharma*” (*supra*), he submits, it is obvious in the present case not only principles of natural justice have been trampled down, but also the impugned order is founded on the grounds at variance from the ones in show cause notices of which the petitioners had not been made aware of, let alone provided with an opportunity to offer explanation.

92. He submits that in “*Tarlochan Dev Sharma*” (*supra*), the Supreme Court had considered that high court had not been right in forming an opinion that appellant was persuading high court to have judicial review like an appellate court.

93. Referring to “*Jyoti Basu and Others V/s Debi Ghosal and Others*” reported in *AIR 1982 SC 983*; “*Mohanlal Tripathi V/s District Magistrate, Rai Bareilly and Others*” reported in *AIR 1993 SC 2042* and “*Ram Beti etc. V/s District Panchayat Rajadhikari and Others*” reported in *AIR 1998 SC 1222*, he submits that right to hold post may be a statutory right, yet an elected person cannot be removed without strictly adhering to the provisions enacted by the legislature for removal.

94. He submits that legal position is crystallized that an elected member can be removed only in exceptional circumstances, adhering to statutory provisions and holding enquiry, meeting with principles of natural justice and giving adequate and proper opportunity to defend the person. He submits that it is necessary, since the same casts stigma upon him. He submits that an elected office bearer is accountable to the electorate.

95. He submits that an occupant of elective office, seated by popular verdict cannot be shown exit for a singular, innocuous action or error of decision. It is not intended by legislature. A singular or casual aberration or failure in exercise of powers is not enough to unseat a duly elected public representative.

96. He goes on to submit that principles of natural justice require as would be appearing from provisions of the MC Act that reasons for proposed removal have to be communicated to the person

proceeded against in order to enable him to furnish explanation of his conduct or omission, which is likely to be construed an abuse of power. He submits that what has not been communicated or not relied upon in show cause notice as a ground for proposed removal, cannot be relied upon, as furnishing basis for order of removal. Persons proceeded against under section 42 and 55A and 55B of the MC Act have to be made aware of precise charge which they are required to meet with and they must be apprised of exact content of the abuse attributed to him.

97. Referring to "*State of Bihar V/s Lal Krishna Advani*" reported in (2003) 8 SCC 361, he submits that in said case, it had been observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution of India. While an authority takes into account a personal reputation adversely affecting him, must provide a chance to a person to have his say in the matter. He submits that thus, right of individual to be heard according to principles of natural justice is recognized and violation of the same will call for scrutiny of judicial review.

98. Referring to decision in the case of "*Keshav Shankar Ekbote*" (supra) he submits that it shows that collector's report cannot be relied on for the same being referred to without giving opportunity to the petitioners. He submits that collector has only given an opinion and suggestion which cannot assume the status of

evidence. He submits that said report cannot be relied on as referred to in aforesaid judgment.

99. He further refers to a decision in the case of “*Chamoli District Co-operative Bank Ltd., V/s Raghunath Singh Rana and others*” reported in 2016 (12) SCC 204, to submit that inquiry must be *bona fide* and shall not be an empty formality. The department should take steps first to lead evidence against delinquent and shall give an opportunity to the delinquent to cross examine witnesses of the department and only thereafter the delinquent be asked to give evidence and to furnish explanation about evidence led against him. He submits that it has been considered that it is incumbent to serve copy of inquiry report of the collected material relied on by the department.

100. Relying on “*Manoj Narula V/s Union of India*” reported in (2014) 9 SCC 1, he submits that the law does not hold a person guilty or criminal only because allegation is made against that person of having committed criminal offence, be it in the form of allegation or first information report or a complaint etc. He submits that it will have to be considered that a person is innocent until proved guilty.

101. He submits, while this is the position, merely for first information report had been lodged and charge sheet has been filed, the guilt cannot be attributed to the petitioners. This simple basic foundational principle of jurisprudence has been ignored or rather overlooked.

102. Referring to “*Baburao Vishwanath Mathpati and Others V/s State of Maharashtra and Others*” reported in 1996 (1) Mh.L.J. 366, he submits that a person must be furnished with information upon which action is based. He submits that it is necessary in order to enable a person to meet with the allegations made against him that he should be supplied all documents and material to him is a necessity and a must under the principles of natural justice. Authority must furnish to the person copies of documents and omission to supply documents and material would be in gross violation of principles of natural justice.

103. He submits that in aforesaid judgment, it has been held that non observance of principles of natural justice itself is prejudice to any man and independent proof of prejudice is not necessary. He, therefore, goes on to submit that there is no merit in the contentions of learned Government Pleader / Assistant Government Pleader that documents which were asked, were not made use of either at pre-decisional stage or post decisional stage and, therefore, no prejudice can be said to have been caused to the petitioners. He submits that the show cause notices are as vague as those can be. He submits, consideration of record available and other reports, without giving any particulars as to what that record means and what the reports were, is not proper.

104. He submits that non supply of documents to the petitioners is obvious and the impugned show cause notices as well as impugned order are liable to be struck down.

105. He submits that exercise of power vitiates the impugned order, if exercise is not *bona fide* for the purpose for which it has been conferred. He submits that in the present matter the action is politically motivated and actuated the authorities with malice in fact as well as malice in law, in issuing impugned show cause notices and passing impugned order.

106. It is contended that elected member of local self government stands on a higher pedestal and when even a temporary government employee cannot be removed on the ground of misconduct without conducting full-fledged enquiry, an elected person can hardly be removed without holding an enquiry. An elected official is accountable to the electorate and his removal would have serious repercussions and would be equal in effect to taking away right of people to have representation through him.

107. Petitioners submit that it is settled legal proposition that removal of a duly elected persons on the basis of proved misconduct is a quasi judicial proceeding. It is imperative that principles of natural justice shall be given its full play and strict compliance to the same shall be ensured even in the absence of

any provision for the same. Principles of natural justice requires a fair opportunity to defend.

108. It is being submitted that an elected person can be removed only in exceptional circumstances after strict compliance with statutory provisions holding enquiry meeting all the requirements of principles of natural justice and giving the person opportunity to defend. Removal of elected person not only affects the elected officer bearers and casts stigma but also takes away his valuable statutory right and the electoral college is deprived of the person of their choice. The petitioners, therefore, have challenged the show cause notice dated 28-03-2018 contending that the same has been issued without jurisdiction.

109. Mr. Sapkal submits, show cause notice has been issued as a formality and not in accordance with the principles laid down by supreme court in the case of *“Ravi Yashwant Bhoir” (Supra)* requiring strict compliance of principles of natural justice at every stage since the electoral representative stands on a higher pedestal than government servants. The show cause notice being without jurisdiction, and in abuse of process of law, the same can be challenged before High Court without awaiting adverse orders, in accordance with the principles laid down in the case of *“Union of India V. Vicco Laboratories”* reported in 2007 13 SCC 270. The show cause notice is an abuse of process of law for it is purportedly passed on

an *ex parte* enquiry and on a complaint not served on the petitioners which has been filed far too belatedly in the wake of biennial election to Maharashtra Legislative Council from local authorities constituencies.

110. He submits that unquestionably rather admittedly, petitioners are elected representatives of people at large from their respective wards and are democratically elected. They are representatives of people. People have exercised their option of right to have represented through the petitioners. In such a case, while a disqualification of an elected councillor in local self government is being purportedly sought pursuant to a complaint by respondent No. 5, a very stringent and severe procedure and standard of proof is to be followed and adhered to and standard of proof is also high. Removal of an elected office bearer is a serious matter and unless a clearcut case is made out, removal of elected representative is not possible. He submits that law on the issue stands crystallized that an elected member can be removed only in exceptional circumstances. He submits that even if it is considered that the petitioners have faltered in their conduct, a singular or casual aberration or failure is not enough to show exit, particularly while the action is innocuous and is an error of decision, when legislative intent is not such. He submits that an elected office bearer cannot be removed by adopting casual approach and resorting to manipulations to achieve ulterior purpose and if that be so, it would

be in violation of Article 21 of the Constitution of India and court being the custodian of law, would not tolerate any attempt to thwart such a violation. He submits that issue of removal of any elected office bearer has serious repercussions and thus all the safeguards and protections provided under the statute have to be kept in mind while exercising power of removal. He submits that severe is the punishment greater is the caution and care to be taken to follow all the safeguards provided under the statute and to scrupulously follow the same. Removal of duly elected member on the proved misconduct is quasi judicial proceeding and, therefore, principles of natural justice are required to be given full play and their strict compliance should be ensured.

111. It is, thus, requested that show cause notices as well as impugned order dated 18th May, 2018 be quashed and set aside.

112. Mr. P. M. Shah, learned senior advocate, with his usual erudite flair projects finely sculpted perspective of the matter, a perspective which purports to have a low down on the circumstances of the case and position, he submits, emerging in the process.

113. Learned senior advocate submits that Santosh Laxman Kanade, who is serving as peon in municipal council, Beed for eleven years had been on duty in the office of President. He is supposed to clean office. Around 9 O'clock, he had opened cabin of

the President and had cleaned the same and had locked it again. By 10.30 he had been waiting for arrival of the President. Around 1.30 while he had been waiting in parking place of vehicles, along with co-employee, namely, Shaikh Iliasuddin Rahimoddin, one Manik Khandekar, Personal Assistant of Vice President had told him that the vice president had called him. Kanade along with Khandekar went to the cabin of the president, where group of councillors had been present. Faruq – petitioner No. 8 had asked Kanade to open cabin of the president. While Kanade had been reluctant, he had been coerced and forced to open the cabin on the pretext that they would like to sit in the cabin. They had rushed into the cabin and had dumped garbage in the ante chamber, cabin, on table and chair of the President and also had poured sewage water from gutter and were shouting slogan "*President Bharat Bhushan Murdabad*" and had left the place. The incident had been immediately informed by Kanade to co-employee, Shaikh on phone and had called him, who had advised him to keep the cabin locked. While both of them had been to the office of superintendent, however, he was not in the office. The event had been informed to one Rajesh Salunke, personal assistant of the president on phone.

114. Later, said Mr. Kanade had lodged first information report bearing No. 0224 at Beed City police station on the same day i.e. on 27th June, 2017 around 18.37 hours. It is submitted that if regard being had to common course of natural events and human

conduct, correctness of allegations would not be doubted. Identification of the accused persons is by a peon of municipal council, who had everyday acquaintance with them. Petitioners, accordingly were arrested and charge sheet was filed against the offenders for commission of offence punishable under sections 143, 343, 341, 269, 270 of the Indian Penal Code and section 3 of Prevention of Damage to Public Property Act, 1984. Later petitioners were released on bail.

115. According to him prompt lodging of first information report assumes great importance, ruling out or at least minimizing chances of improvement and embellishment in the case registration of timely first information report is corroboration to occurrence of the event.

116. Learned senior advocate considers that fulcrum of pleadings of petitioners is – municipal administration had failed to deal with worsening garbage disposal crises in the city and more particularly the President had failed to take effective steps to address scientific way of garbage management resulting in discontent among councillors of *Kaku Nana Aghadi*, which had to step up agitation as displeasure against municipal administration was wide and was getting coverage including in newspapers and the same had culminated into a “symbolic garbage attack” in the office of President and that the petitioners themselves have pleaded facts

leading to dumping garbage in the office of President to register their protest (paragraph 19 of the writ petition) and petitioners had placed reliance on local daily newspaper particularly Lokmat, "Hello Beed" dated 28th June, 2017 and that said news report detailing the incident, is picturesque, annexing the same to the petition, marking it Exhibit-N.

117. He submits, writ petition has been filed on 4th April, 2018 challenging show cause notice dated 28th March, 2018, copies of which were served on the petitioners around 31st March, 2018. Directly and substantially, the issue involved in the same is incident dated 27th June, 2017 of garbage attack by petitioners. Exhibit-N is annexed to the writ petition to substantiate their contention referring to crises in garbage management. Annexures to writ petition constitute integral part of the writ petition. Memorandum of writ petition with annexures constitute one single document. Writ petition is affirmed on oath in a judicial proceeding at High Court level. Every statement made therein is conscious and responsible. Petitioners No. 1 to 9 have filed present writ petition who were also acting in concert before State Government and had been functioning *de facto* as a team and were singing song in the same tune.

118. He submits, it is pleaded in the petition that Exhibit-N contains news report as to detailing incident of symbolic dumping of

waste on the chair of the president of the municipal council. He submits that news "*eo nomine*" refers, the petitioners accompanied by the photographs, which identify petitioners.

119. Learned senior advocate submits the news report consists of four parts : The anatomy of news report (i) title; (ii) the news report; (iii) the photographs of the event and (iv) the comments on the event by the vice president. According to him, writing under the photograph in the news report refers to presence of vice president Hemant Kshirsagar, Amar Naikwade, Faruq Patel and others while garbage and sewage water being dumped in the cabin of the president. He further refers to comments as quoted in newspaper as those by vice president to the effect that now arbitrary administration of president would not be tolerated. He should not hold the citizens at bay misusing the post. Today, garbage has been dumped in cabin, tomorrow, garbage will be thrown on the person of president wherever he would be seen. He submits that this gives eloquent indication of mind set of the offenders and the direction of flow of event not only showing garbage attack but also threatening throwing garbage on the person on the president

120. He submits, report detailing incident contains solemn admission made by the petitioners themselves as to the complicity of the petitioners, exactly answering allegations stated in the show cause notice. Newspaper report is explicitly self explanatory leaving

no room for any doubt or confusion and is a substantive evidence "*proprio vigore*". It constitutes admission in terms of section 17 of the Indian Evidence Act. It has immense probative value and is the best evidence against petitioners wide section 18 of the Evidence Act. He, therefore, submits that in the light of news report, it would be otiose exercise to call for or to adduce any further corroborative evidence to prove the facts which are so admitted. Petitioners have not disowned said news report nor have they offered any subsequent clarification.

121. He has submitted that going by the events as they are, conduct of the petitioners is not only suggestive or indicative of acceptance of disgraceful conduct, but it turns out that in terms they have admitted the same. He purports to give an exposition on its effect as evidence, according to the provisions of Indian Evidence Act. During the course of his submissions, he makes reference to section 3 of the Act, definitions "*proved*" and "*disproved*", then to provisions under Chapter - admissions in the Evidence Act.

122. Learned senior advocate submits that in the circumstances, onus shifts on the petitioners to dispute correctness of news report detailing the incident. The onus is on the petitioners to rebut facts which are admitted by them. He submits that burden of proof to disprove fact of authorship and participation of petitioners in the

offending event of garbage attack within contemplation of expression 'disprove' of section 3 of Evidence Act is on the petitioners, and according to him, petitioners have failed to disprove their involvement even from their conduct, either prior or subsequent to the occurrence of the incident of garbage attack. He submits that publication is made *ante litem motam* as petitioners have publicly, openly, visibly and conscientiously conceded to and confirmed incident of garbage attack. On the contrary, have throughout endorsed and adopted the same. He continues to submit further that even during inquiry before state government, there is no denial of the occurrence of the facts on merits of points of substance of inquiry. No evidence is adduced by the petitioners in rebuttal, despite availability of sufficient opportunity. He submits that, however, for the first time, during the course of hearing before this court, faint, feeble and half hearted – that too without any heart in it – an attempt to shy away from offending event is made. He submits that it amounts to “*double speak*” exposing split personality within all the petitioners. According to him, such a defence is very weak in knees itself due to stand of petitioners at a pre-litigation stage as well as during the course of inquiry before state government. He submits that in the defence of *doppelganger* (*look alike but non biologically related*) would be difficult for the petitioners.

123. He thus goes on to submit that the only legal inference from the proved facts possible is whether those constitute disgraceful conduct or not, in terms of section 42 of the MC Act and discernibly material facts stand duly proved within expression proof in the section 3 of the Evidence Act, namely – occurrence of garbage attack, resultant lodging of first information report, filing of charge sheet against the petitioners, them being released on bail, news report detailing incident published on 28th June, 2017.

124. He submits that garbage attack had been ill-conceived, it was a well thought of, well considered, well planned, well designed plan and had been ruthlessly executed like a blitzkrieg. The event was part of agitation. The motive, preparation, previous and subsequent conduct of the petitioners pointedly shows that it was cold blooded conspiracy. He submits that it did not stop at that, the vice president as a leader went on to give further threats to step up similar garbage attacks including even on the person of the president. He submits that while it is collective responsibility of all the councillors to apply their minds together and explore possibility to solve problem of waste management, instead of adopting constructive activities, petitioners have capitalized the problem for garbage attack with a view to widen their political base, with a view to project their image in the electorate as valiant heroes and political gladiators and to injure image of their political rivals. He

submits that it is nothing but political stunt under the guise of espousing social cause. He submits that garbage attack is an assault on law and order and is shameful behaviour unbecoming of the team of councillors. Such conduct is not only criminal but is also ignominious and disgraceful in terms of section 42 of the MC Act. Petitioners are elected representatives of people as municipal councillors and are office bearers and public functionaries and are also local leaders holding public posts and are privileged members of the community. They are expected to be gentlemen.

125. With a view to buttress his submissions that facts, events and circumstances and the conduct of the petitioners had *de facto* and *de jure* been disgraceful conduct within the meaning of Section 42 of the MC Act. He refers to following circumstances -

In “*Nandkumar V/s State of Maharashtra*” reported in 2016 (6) *Mh.L.J.* 87, the councillor had threatened the Chief Officer by showing a foot-ware (chappal). He was standing in a threatening posture. This conduct was held as disgraceful. This is considered as uncivilized behaviour by a representative of the people.

In “*Ravi Yashwant Bhoir V/s District Collector*” reported in (2012) 4 *SCC* 407, it is clarified that the disgraceful conduct need not necessarily be connected with the official duty and disgraceful means giving offence to moral sensibilities and injurious to reputation or bringing disgrace or shame.

In “*Udaysinh Prakashrao Nimbalkar V/s State of Maharashtra*” in writ petition No. 3193 of 2007 dated 27th March, 2008, it is clarified that threatening the Chief Officer, throwing the papers / files and causing obstruction in the official work amounts to disgraceful conduct.

Disgraceful conduct is not statutorily defined in the Act. Hence, it is required to be considered from the dictionary meaning. “Disgraceful Conduct” is prefixed by the expression “any”, hence it need not necessarily be in discharge of the duties, vide Full Bench Judgment in “*Anishbhai Ishabhai V/s State of Gujrat*” reported in *AIR 1995 Guj 118*. The legislative history is also considered.

In “*Rahul V/s State*” reported in 2016 (6) *Mh.L.J.* 450, it is held that public functionaries are not expected to breach the doctrine of public trust as well as creation of chaotic situations or conduct themselves in capricious manner and the violations found to have been committed speak for their seriousness fitting into a Latin phrase *res ipsa loquitur*.

126. Mr. Shah submits that actual conviction and sentence by competent authority before disqualification would not be necessary for disqualification pursuant to section 42 of the MC Act. He refers to an unreported judgment of his court in the case of “*Udaysing Prabhakar Nimbalkar V/s State of Maharashtra*” (*supra*) where he submits

that division bench had not accepted arguments that merely registration of offence or pendency of criminal trial, but actual conviction and sentence to disqualification could be pressed into aid.

127. He submits that section 42 of the MC Act is an independent stand alone provision separate from verdict in regular criminal trial. Proceedings under section 42 of the MC Act and in criminal trial differ in respect of degree of proof, where preponderance of probabilities in case of former whereas proof beyond reasonable doubt in case of later; while onus may shift on delinquent in the former whereas it continues with prosecution in the later. The forum in the former is the State Government whereas regular criminal case court is in the case of later. Procedure in the former is observations of rules of natural justice whereas it is Criminal Procedure Code in the case of later. The State Government is not supposed to act mechanically or as an administrative authority to do ministerial job of declaring disqualification, depending on decision taken by criminal court. He purports to pose a question as to what would happen if no first information report is lodged. For an act to be disgraceful conduct, first information report is not a pre-condition, statutory requirement or otherwise. He submits that analogy drawn from the case of *“Manoj Narula V/s Union of India”* reported in 2014 (9) SCC 1 paragraph No. 121, is difficult to be applied in the present matter, where statutory disqualification is found in

section 8 of the Representation of Peoples Act. The Parliament has made distinction between accused persons and convict as would be found in section 8.

128. Disqualification of a member of municipalities is dealt with under Article 243-V (i) (b) referring to that if he is so disqualified by or under any law made by the State legislature and MC Act provides for disqualification for any disgraceful conduct. He further contends that guilty of any disgraceful conduct is disqualification created by the legislature of the State, which is not to be found in any provisions of Constitution or law made by the parliament.

129. He submits that there can be no reliance on Representation of Peoples Act and no analogy can be drawn and applied with municipal laws. Provision under section 42 of the MC Act is not an action at common law, nor is the action in equity. It is statutory proceedings, it is a special jurisdiction and will have to be invoked and exercised in accordance with statute creating it. Proceedings under section 42 of the MC Act cannot be decided on the considerations of policy (*Jyoti Basu V/s Debi Ghoshal*) [1982 (1) SCC 691].

130. Learned senior advocate drawn attention to following extract from *Udaysinh Nimbalkar's* case (supra)

“ the word 'guilty' appearing in sub Section (1) of Section 42 of the Act cannot be read to mean that the guilt has to be established beyond reasonable doubt and before a Court of competent jurisdiction. The word 'guilty', therefore, would not mean that no action under Section

42 (1) of the said Act could be initiated unless and until the person has been found guilty by the Court of competent jurisdiction what would, therefore, they required to prove under Section 142 (1) in order to establish the guilt, would be on the basis of preponderance of probabilities and on the basis of material i.e. available before the authority. Sub section 93) of Section 42 of the said Act contemplates issuance of show cause notice, giving reasonable opportunity of showing cause and this has been complied with by the respondents. After the show cause notice was issued to the petitioner, the petitioner was heard by the Chief Minister before the impugned order came to be passed. ”

131. Learned senior advocate further adverts to following passage

–

“ The petitioner is alleged to have thrown the files and threatened the Chief Officer and had asked for allotment of certain work. This court cannot examine whether the allegations on the face of it sound ludicrous or whether the allegations emanate from malice or ill will. ”

132. He submits that while *mala fides* are being attributed to the authority, the authority has not been joined in personal capacity as party to the writ petition and, as such, argument with regard to the same will have to be rejected and for said purpose, he once again refers to *Udaysinh Nimbalkar's* case (*supra*) pointing out paragraph No. 12 therein.

133. He submits that allegations of *mala fides* are easy to be made by distorting facts. Allegations are vague, not backed by sufficient particulars, without impleading president of municipal council as party respondent allegations are made against president.

Thus, *mala fides* are alleged against State Government, concerned minister is not joined as a party. He submits that observations in “*Express Newspaper Pvt. Ltd. V/s Union of India*” reported in 1986 SCC 133, paragraphs No. 116 and 121 are distinguishable. There concerned ministers were joined in as party respondents and the allegations were not in particular. He further submits that while state government is impleaded as party respondent No. 1, and even before issuance of notice of present writ petition, copies were duly served on respondent No. 1 gives an indication that State government was bestowed with knowledge of Exhibit-N to the writ petition contending news paper report detailing incident having derived knowledge from the sources of this writ petition. In the impugned order, the very same newspaper report is referred, petitioners cannot have any grudge against the same as no prejudice is likely to be caused in referring to the documents on which petitioners themselves are relying while challenging the show cause notice.

134. He submits that in inquiry under section 42 of the MC Act, State Government functions as a *quasi* judicial tribunal and not as a court. He submits that division bench of this court in the case of “*Narsingrao Gurunath Patil V/s Arun*” reported in 2002 SCC On Line Bombay 698 placing reliance on earlier division bench judgment of Bombay high court in the case of “*Ravi Naik*” had rejected that newspaper reports are not admissible in evidence observing thus-

“ In that case, the speaker drew an inference from the contents of the news paper reports that conduct of two legislators concerned in that case falls within the mischief of para 2 of the Tenth Schedule despite the fact that categorical assertion was made by both the legislators in their written statement that they had not given up the party membership and continued to be the Members of Maharashtra Gomantak Party. The Division Bench held that the Evidence Act is not strictly applicable to Tribunals or quasi judicial bodies who are required to decide and adjudicate upon rights. The view taken by the Division Bench was affirmed by the Supreme Court. ”

135. Referring to following extract from the same judgment, learned senior advocate submits that rule of non traverse in *quasi* judicial proceedings would hold its sway-

“ Moreover, in the entire written statement there was no pleading to the effect that the petitioner had not given up the membership of Congress (I) party and he continues to be a member of the said party. ”

136. Learned senior advocate submits that show cause notice is very lucid and clear in its terms and does not admit any ambiguity or confusion. It contains a concise statement of material facts. It succinctly states full particulars constituting a complete cause of action. The show cause notice also apprises delinquent as to the potential possible consequences in the event allegations are proved. It calls upon the delinquent to file reply in defense within fifteen days of service. It also apprises that in the event of failure to file, reply presumption about they have no explanation in defence to offer would be drawn and appropriate action will be taken.

137. Learned senior advocate submits that conspectus is, thus, common course of natural events human conduct, public business and totality of circumstances leading to and *qua timet* action of the peon in filing first information report, filing of charge sheet against the petitioners and order of Judicial Magistrate enlarging them on bail, substantial evidence of admission of guilt in the form of publication of news report, picturesque detailing of garbage attack and on the top of it, there is no reply denying facts and issues stated in the show cause notice, findings of fact are recorded in the impugned order, having regard to burden of proof and preponderance of probabilities cannot be termed as perverse or in defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. It is neither absurd nor preserve.

138. According to learned senior advocate, right from the beginning, petitioners had been resolute and stubborn under a predetermined strategy. Show cause notice had not been contested by filing reply in defence on merits. He submits that the petitioners have contended that show cause notice is an abuse of process of law and had been issued without jurisdiction and was merely a formality, referring to application for adjournment dated 24th April, 2018, while the matter had been set down for final hearing. Similar stand had been taken before high court in affidavit dated 25th April,

2018. The inquiry by collector had been behind petitioners' back and a reply now to show cause notice would be an empty formality and it would amount to fruit of a poisonous tree. Show cause notice is only for namesake with *mala fide* view to disqualify the petitioners. The action by the State is arbitrary and defamatory undermining democratic process containing bold allegations affecting reputation of representatives of people and had been at the behest of president and the complainant whose wife is a councillor. According to learned senior advocate, affidavit does not deny opportunity of hearing, but they have deliberately refused to file reply.

139. According to learned senior advocate, hyper technical and artificial defences are pressed into service by the petitioners. He refers to a maxim *culibet licet renuntiare juri pro se introducto*.

140. According to learned senior advocate, at the most grievance of the petitioners could be that opportunity in the manner desired by them has not been given, since case neither at all falls in the category of non observance of principles of natural justice nor no notice at all or no hearing at all. He submits, petitioners were never genuinely interested to proceed with the matter on merits. They wanted to continue to be members beyond poll of MLC elections.

141. Objections are strategical and not real. The strategy was to defeat or to cause delay in disposal of matter. According to him, the

stand of the petitioners before the State Government has been confusing, hazy and evasive like *cliff hanger* with a view to redeem the situation, petitioners have intentionally tried to create artificial ground of procedural impropriety to overcome merit-less case for them. Therefore, a pre-determined strategy is adopted not to participate effectively in the proceedings before State Government and to create grounds for challenging verdict alleging non observance of principles of natural justice. He submits that this is a hyper technical contention. He submits that hyper technical contention has been canvassed adopting denial mode that no copies were received, no charges were framed etc. He submits that within three days from the date of service of show cause notice, present writ petition had been filed together with annexures of about 128 pages, suggesting that it was not difficult for the petitioners to file reply denying statements made in the show cause notice if at all the petitioners had any justification on merits of the case, however, had strategically and purposely avoided to file reply in defense.

142. He submits that several opportunities and wakeup calls were given to the petitioners to file reply on merits, but they have deliberately kept active silence on merits. He refers to that on 11th April, 2018, adjournment of one month had been asked. On 13th April, 2018, high court had made it clear that it would be open for the petitioners to file reply, yet no reply had been filed, despite there being rectification of clerical error. On 19th April, 2018 notice

had been issued by State Government fixing the matter before it on 24th April, 2018. Notice had been in the wake of time frame set out by the high court in its order dated 25th January, 2018 in writ petition No. 880 of 2018. Period of three months from the date of order was to expire on 24th April, 2018.

143. Learned senior advocate refers to that on 24th April, 2018, time limit framed by high court in writ petition No. 880 of 2018 expired and no extension to the time frame was sought at any time. On 24th April, 2018, all the petitioners filed an application for adjournment before State Government, pending disposal of writ petition in high court. Final hearing was concluded on 24th April, 2018 pursuant to directions and with due deference to time limit set out by the high court, in writ petition No. 880 of 2018.

144. He contends that on 24th April, 2018, respondent No. 5 had filed an affidavit dated 20th April, 2018 along with copy of order of high court dated 25th January, 2018 in writ petition No. 880 of 2018. He submits that on 26th April, 2018, while petitioners submitted that rejoinder affidavit is ready and will be filed on 27th April, 2018, petitioners at least on 26th April, 2018 had knowledge of order of high court as to time frame given in writ petition No. 880 of 2018.

145. On 25th April, 2018, petitioners had filed rejoinder to the affidavit in reply dated 20th April, 2018 and in paragraph No. 3

therein observations are made in respect of orders in writ petition No. 880 of 2018. On 3rd May, 2018, time bound prohibitory order dated 26th April, 2018 expired by efflux of time. On 4th May, 2018, representation had been made by the petitioners to the government as to the automatic continuation of interim relief beyond 3rd May, 2018. Petitioners had not moved high court for extension but interpreted the prohibitory orders as automatic extension. The footnote therein tantamount to threat of the contempt of court if the matter is decided by passing any order adverse to the interest of the petitioners. 4th May, 2018, was the last working day of the high court and no prayer was made seeking extension of interim relief.

146. He submits that respondent No. 5 in its complaint had brought to the notice of the government and footnote clarifies that due to influence of petitioners, chief officer is unable to lodge complaint. Thereafter, pursuant to orders of high court dated 25th January, 2018, in writ petition No. 880 of 2018, report of collector was called by the State Government. Collector in turn had called report from chief officer and based on it the collector had made report dated 16th March, 2018. Petitioners were not supposed to be supplied with copy of complaint of respondent No. 5 and report of preliminary inquiry conducted by chief officer or collector. Non supply of the report of preliminary inquiry would not vitiate inquiry conducted by State Government and final orders passed therein. Petitioners are not entitled to claim as a matter of right, report

prepared by the collector. Complaint by respondent No. 5 has only triggered proceedings initiated by government on its own motion.

147. Learned senior advocate submits that upon complaint of respondent No. 5, inquiry conducted before issuing show cause notice is only an administrative order and not quasi judicial order. State Government was to form an opinion as to whether to initiate inquiry or not. Being an administrative order, no *lis* is involved. There is no need to issue show cause notice, nor to hear the petitioners by collector. He refers to the case of “*Sultan Singh V/s State of Haryana*” reported in (1996) 2 SCC 661 paragraphs No. 4 and 5. Government was thus, it appears, to ascertain whether *prima facie* any material exists or not and it will be only subjective satisfaction on the basis of material on record that the government has to decide whether to issue show cause notice or not. He refers to “*Prabhakar V/s Jt. Director, Sericulture*”. Object of carrying out such preliminary inquiry is only to save valuable time of State Government from frivolous complaint.

148. While information regarding offending acts committed by the petitioners being brought to the notice of State Government, proceedings do not lose its character as *suo moto* proceedings. Complaint by respondent No. 5 constitutes nothing more than relevant information to State Government to take such action as to government would deem fit. He refers to case of “*Amicus curiae V/s*

Prashant Bhushan” reported in 2010 (7) SCC 592. Collector’s inquiry was not statutory inquiry. No prejudice is caused whatsoever to the petitioners by not furnishing copies of report. Report of collector had not been binding on the State.

149. Over and above this, he submits, copies of report of collector were in fact furnished to each of the petitioners. Show cause notice dated 28th March, 2018 contains a recital about copy of report is annexed. While acknowledging service of notice, grievance in respect of non receipt of report had been made only by petitioners No. 1 and 3 and not by other petitioners. While petitioners No. 1 to 9 are litigating as a team, such a grievance by petitioners No. 1 and 3 would lose its significance, as it depicts that other petitioners indeed had received copy of the report. The grievance of petitioners No. 1 and 3 for the same is falsified by report of office superintendent dated 13th March, 2018, page 202 and the same is fortified by affidavit of Chief Officer page 219.

150. He goes on to submit that petitioners have created record showing that copies of report of collector was furnished on 4th May, 2018. When the petitioners had secured copy on 4th May, 2018, they could have secured the same, much earlier also.

151. He submits that as endorsement by petitioner No. 1 and other endorsements are obviously afterthought improvement in artificial attempt to create grounds of violation of principles of

natural justice. In impugned order, observations have been made that initially it had been got confirmed that concerned have received necessary documents and this is a statement of fact as to what transpired in the hearing before State Government and the same is unassailable before high court unless steps are taken before the same forum i.e. the State Government. Judgment is conclusive of facts stated therein. Public policy basis probe on the correctness of record of quasi judicial authority. It is a quasi judicial tribunal in its proceedings. It is not open to petitioners to say before high court that the record State government in judgment is incorrect. He refers to n relies on "*Bhagwati Prasad v/s Delhi State Mineral Development Corporation*" reported in 1990 (1) SCC 361. The only way to have the record corrected is while matter is still fresh in the minds of judges, to call the attention of the very judge who made the record to the fact that the statement made was an error. No such step is taken. Therefore, the matter must necessarily end there. The decision could be questioned for error of law or of the conclusion as to the facts but not to the correctness of statements as to what transpired during the course of the proceedings.

152. He submits that in law, there is presumption that official acts have regularly performed referring to section 114 illustration (e) of Evidence Act. He submits that considering factual situation it would have been a useless formality to offer opportunity to the petitioners inasmuch as they have accepted occurrence of offending incident.

He submits that it is well settled that courts would not insist upon compliance of useless formality and where it would be a futile exercise to give a delinquent an opportunity of being heard. He refers to the case of “*Ashok Kumar Sonkar V/s Union of India*” reported in (2007) 4 SCC 54.

153. Referring to paragraphs No. 72 to 74 from *Narsingrao Patil's* case (*supra*), he submits that the court would not be able to go into correctness of choice made by administrator among various alternatives open to him nor the court substitutes its decision. Court would not interfere with unless it was illegal.

154. He submits that ambit of Article 227 is crystallized to that it is neither review nor to re-appreciate or reweigh the evidence upon which determination of a subordinate courts purports to be bases and not to be used as the cloak of an appeal in disguise just because another view is possible. It cannot be exercised to correct error of fact or even of law to substitute its own decision. It had to be exercised most sparingly and only in appropriate cases, in order to keep the subordinate court within the limits of jurisdiction. Where rules of procedure or acting in violation of principles of natural justice, where there is no procedure specified and thereby occasioning failure of justice or where there is patent error which is evident, which can be seen or perceived without involving any lengthy or complicated argument. For just for another view is

possible than the one taken by the tribunal, jurisdiction is not to be invoked by the high court and improper and frequent exercise of power would prove to be counter productive. To buttress his aforesaid submissions he relies on “*Waryam Singh and Others V/s Amarnath and Others*”, [AIR 1954 SC 215]; “*Surya Deo V/s Ram Chander and Others*” [(2003) 6 SCC 675]; “*Celina Coelho V/s Ulhas Mahabaleshwar and Others*”, [(2010) (1) SCC 217] “*Shalini Shetty V/s Rajendra Shankar Patil*” reported in [(2010) 8 SCC 329].

155. He submits that *Kaku Nana Aghadi* was formed as original political party. Candidature of petitioners was set up by said *aghadi*. President of municipal council was elected as a candidate of Nationalist Congress Party. Present ruling party in the state government is coalition of Bhartiya Janta Party and Shiv Sena. There is no political link as such, *inter se* the president on one hand and the ruling party on the other. At the elections to MLC, there was contest between candidate set up by BJP and an independent candidate. There was no official candidate set up by Nationalist Congress Party or Kaku Nana Aghadi. There was no whip issued to the petitioners to vote for any particular candidate and it was open for to vote any candidate of their individual choice. And for this reason, petitioners wanted to put off the expected disqualification which they were asking for beyond schedule date of poll of MLC elections.

156. He submits that arguments advanced on behalf of the petitioners about section 44 (1) (a), which refers to any of the disqualifications referred to in section 16 except disqualifications specified in clause (h) and sub clause (b) and (ba) of sub section 1 of section 16 refer to disqualification specified in sections 42 and 55 of the MC Act, respectively. Thus, the original jurisdiction to deal with proceedings under section 42 as well as 55 B vested with collector under sub section 3 of section 44 and State government would be an appellate authority under sub section 4 of section 44. He submits that concerned provisions do not bear strain of interpretation sought to be placed by the petitioners for more than one reason.

157. Mr. Shah, learned senior advocate invokes Latin Phrase *Generalia specialibus non derogant*, meaning – ordinarily general law must yield to special law i.e. general law would not derogate special law. He submits that section 42 of the MC Act is a special provision relating to liability of councillors to removal from office on the grounds enumerated therein. It is a complete scheme. The provision empowers the authority for action on its own motion or on recommendation of the council for removal from office, if a councillor is guilty of misconduct in discharge of duty or of any disgraceful conduct or he has become incapable of performing his duties as a councillor and also provides for reasonable opportunity of showing cause before making order of removal by the State or

passing resolution by the council. He purports to point out that punishment and the concomitant consequences are removal of a councillor and disqualification for a period of five years from the date of order. He refers to and relies on a decision of the Supreme Court in the case of *“Thiruvalluvar T. C. V/s Consumer Protection Council”* reported in *AIR 1995 SC 1384* to buttress the submission that ordinarily general law must yield to special law. He also refers to decision in the case of *“Sultana Begum V/s Prem Chand Jain”* reported in *(1997) 1 SCC 373*, to support his submission that the court shall make effort to interpret provisions so as to harmonize them and to give effect to the purpose of the act and rule of interpretation requires that two inconsistent or repugnant provisions of an act shall be allowed to be operative without rendering either of them otiose. He advances the submissions to say that a special provision would not be rendered otiose by implication by a provision of general nature, *viz.*, in present matter as submitted on behalf of the petitioner sub clause (a) of sub section (1) of section 44 of the MC Act. He further points out that sub clause (b) of sub section (1) of section 16 does not does not even refer to section 44 and it expressly refers to section 42. He thus submits that there is no conflict between sub clause (a) of sub section (1) of section 44 one one hand and sub clause (b) of sub section (1) of section 16 read with section 42 on the other. The grounds on which a councillor is to be removed are specifically enumerated in section 42 and in respect of such

grounds, general provision of sub clause (a) of sub section (1) of section 44 would not hold and would give way to section 42. Else he is afraid any other interpretation would render section 42 of the MC Act an otiose provision.

158. According to learned senior advocate, sub clause (b) of Sub section (1) of Section 16 read with section 42 together constitutes a family of sections. Section 44 falls outside the membership of this family. The text of sub-clause (b) of sub section (1) of section 16 expressly refers only to section 42 and this clause (b) is incidental to and consequential upon and it becomes operational only upon making the order by the State Government under section 42 removing the councillor from the office. Clause (b) of sub section (1) of section 16 also speaks of the reduction or curtailment of the disqualification ordered by State Government under sub section (4) of section 42. Therefore, the original jurisdiction to proceed for the removal of the Councillor flowing from the grounds enumerated in section 42 (1) and (2) vests with the State Government.

159. He submits, considering the legislative scheme of the respective provisions it is discernible that section 42 is the leading provision, whereas Section 44 is the subordinate provision. Moreover, sub clause (b) of sub section (1) of section 16 is a special provision also in so far as it relates to enabling the reduction or curtailment of the period of disqualification provided under sub

section (4) of section 42. He refers to a decision of full bench of this court in the matter of *“Shah Faruq Shabbir and Others V/s Govindrao Ramu Vasave and Others”* reported in 2016 (5) Mh.L.J. 436.

160. Clause (b) of sub section (1) of section 16 is an enabling provision; under this clause it is open to the State Government to reduce the period of disqualification for any ground. As per the legislative scheme of Section 42, clause (b) of sub section (1) of section 16 appears to be in the nature of proviso to section 42. As per the nomography and legislative scheme of section 42 this provision should have been placed in section 42 itself. To illustrate, reference could be made with utility to *“Ishverlal Thakorelal Almaula V/s Motibhai Nagjibhai”* reported in AIR 1966 SC 459.

161. The President as well as Vice President are wearing two hats, one as a councillor and the other as a president or vice president, as the case may be. Section 55-A deals with removal of the President and Vice President by the Government' juxtaposed with Section 44 which deals with the councillor. The sub clause (ba) of sub section 1 of section 16 explicitly refers to the orders of removal made under section 55-B. In the matter of *“Sunita Vilasrao Salunkhe V/s State of Maharashtra”* reported in 2006 (3) Mh.L.J. 227, it is held that section 44 (1) (e) does not provide for the removal of the President.

162. Next leg of his submissions is that interim orders passed in this case are lucid and clear. They refer not only to time that is to

begin but also refer to time which is to end. He submits that the words in the order are "*till next date*" in stark distinction to "*in the meanwhile*". The intention underlying had been operation of interim relief to next specific date of listing and not till next date of hearing. The effect of the order was that interim relief was to expire by efflux of time specified in the order and public policy demands an interpretation which would not lead to needless confusion and endless mischief. He refers to a decisions in the cases of "*Govinda Bhagaji Kamble and Others V/s Sadu Bapu Kamble and Others*" reported in 2005 (1) Mh.L.J. 651 and "*Dr. Louis Proto Barbosa V/s Union of India*" reported in 1992 Supp (2) SCC 644 with a view to canvas that in the present facts and circumstances, the restraint under orders of division bench on taking final decision had not been subsisting beyond 3rd May, 2018.

163. He submits that the petitioners were posted with knowledge of order in writ petition No. 880 of 2018 with service of affidavit in reply on 24th April, 2018. Learned advocate submits that time frame set out by high court in writ petition No. 880 of 2018 cannot be rendered meaningless and in due deference to the interim order passed in present matter as well as in writ petition No. 880 of 2018 the government had completed final hearing on 24th April, 2018 and had pronounced final decision on 18th May, 2018, while there had been no interim relief operating.

164. Learned senior advocate further goes on to submit that once there is finding of disqualification, until the same is upset, it would hold good, however, weak it may ultimately prove. Based on the decision in "*Smt. Indira Nehru Gandhi V/s Raj Narain*" reported in (1975) 2 SCC 159, he submits that the practice and precedent of High Court would show that once returned candidate is unseated and suffers disqualification absolute and unconditional stay is not granted. Parameters of granting interim relief after the order of disqualification are totally different. In several cases, interim relief have been granted but conditionally. He refers to decision of Full Bench of this court in "*Shah Faruq Shabbir and Others V/s Govindrao Ramu Vasave and Others*" in writ petition No. 4323 of 2011 . He further goes on to submit that in present case, unconditional stay was granted because of the special circumstances then prevailing.

165. For all aforesaid, he submits that, petition is liable to be dismissed.

166. At the outset, learned Government Pleader, Mr. A. B. Girase, submits that he supports the submissions advanced by learned senior advocate Mr. P. M. Shah on behalf of respondent No. 5 on all counts. He further submits that his submissions are in addition to the submissions made on behalf of respondent No. 5 with a view to reinforce those.

167. Learned Government Pleader, Mr. Girase, in polite and persuasive manner submits that keeping in view the events, allegations against petitioners would not be termed as baseless or without any substance. Petitioners, though, are elected representatives of people, their disposition had not been in keeping with expectations of their electorate. Such a lowly act by them had not been expected at all. The act had indeed been unbecoming of representatives of people. Apart from the act being disgraceful, the petitioners have failed to defend the same by responding to show cause notices. Despite multiple opportunities made available to them, they have deliberately avoided to give reply in defence. Their conduct to a large extent gives indication of that they had no defence worth consideration and as such, had been evasive. He submits that Hon'ble Minister – the authority has followed due procedure before and after issuing show cause notices.

168. He submits that there is no merit in the contentions advanced on behalf of the petitioners. It is not the case where principles of natural justice have not been followed at all. He submits that relevant documents had been made available to the petitioners. Other material about which petitioners are making fuss over, have not been made use of either at pre-decisional stage or in the impugned order or even post – decision. No prejudice can be said to have been caused to the petitioners in the matter.

169. He submits that show cause notices are valid and legal, so is the impugned order. No fault can be found with the same and the court may not indulge into the request being made under the writ petition.

170. Perusal of provisions of sections 16, 42 and 44 of the MC Act, would evince that section 16 enumerates negations to qualification for becoming councillor, *inter alia*, one at sub clause (b) of sub section (1) removal from office under section 42 and for six years from the date of removal unless relieved earlier from disqualification by State Government. Section 42 of the MC Act authorises the State Government to remove a councillor from office, if he has been guilty of any misconduct in discharge of duty or any disgraceful conduct during the current term of office or immediate preceding term or for him having become incapable of performing duty as councillor. Whereas, section 44 mandates that a councillor shall be disqualified to hold office during its term if he is or becomes subject to any of the disqualifications specified in section 16 except the disqualification specified by sub clause (h) of sub section (1) and disables him from continuing to be a councillor and stipulates that his office shall become vacant. It further provides that a councillor if he incurs any disqualification under sub section (1), the chief officer shall submit a report to collector of his becoming aware of the disqualification through any source

whatsoever. The authority to decide whether vacancy has arisen shall be the collector, who is expected to give his decision on receipt of report of chief officer or on his own motion or on application made by a voter. It is also provided that no order shall be passed without giving councillor a reasonable opportunity of being heard.

171. Submissions on behalf of respondent No. 5 in respect of interpretation of provisions of sections 16, 42, 44, 55A and 55B are relevant and do carry immense rationale and substance.

172. It appears that sections 42, 55A and 55B of the MC Act are specific and special provisions for removal of councillor / vice president from office and do not refer to collector and in the process councillor / vice president incur disqualification, and the decision is to be taken by an authority referred in those provisions, higher in rank than collector. Contentions on behalf of the petitioners that such an order cannot be passed by State Government and the same is not sustainable do not appear to carry any force. Thus, contentions in this respect on behalf of the petitioners do not hold any water and are unsustainable.

173. Looking at the scheme under provisions of section 16, 42, 44, 55-A and 55-B of the MC Act, it would emerge that section 44 sub section (3) would hardly be said to provide a forum so far as disqualifications pursuant to sections 42, 55A and 55B are concerned.

174. While learned senior advocate appearing on behalf of respondent No. 5 contends that paragraph No. 19 refers to a newspaper report detailing the incident, it also bears that petitioner No. 9 had taken a lead role and names of quite a few petitioners have also been referred to, suggesting participation in the incident. Some utterances have also been attributed to petitioner No. 9 in the news item in respect of the incident. This, according to learned senior advocate would be admission of participation in the incident. In this respect learned senior advocate has referred to a decision in the case of *"Narsingrao Gurunath Patil"* (*supra*) whereunder, according to him, it has been considered that Evidence Act is not strictly applicable to tribunals and quasi judicial bodies. As such, according to him, the newspaper report could be taken into account and while it has been relied upon on behalf of the petitioners, observations in the report shall receive their due and no fault can be found with the consideration of the same by Hon'ble State Minister.

175. During the course of submissions the petitioners have emphatically stated that Exhibit-N has been referred to in order to highlight ruinous state of affairs and was not an admission of participation in the alleged act. It is being submitted that a stricter proof is required while unseating an elected office bearer and newspaper report would not form basis for the same. It has been submitted that reference to annexure in a paragraph is not an admission and in fact and in law it is not and it would not be so

and, the authority ought to have asked for its proof from the complainant and establishment of the same by evidence.

176. It is submitted paragraph No. 19 does not specifically accept the imputed act to be by the petitioners. It makes reference to some persons and the newspaper report also refers to that there were quite a few persons apart from the petitioners.

177. The newspaper report and report of chief officer do not form part of show cause notice nor does it appear that the petitioners were given an inkling that the those are to be considered while passing impugned order.

178. In respect of reference to newspaper report in paragraph No. 19 of the writ petition, it is contended by petitioners that it *ipso facto* would not be said that this is an acceptance of the act referred to and alleged to be by them. In this respect as well, the petitioners ought to get an opportunity to explain and respond to the same. There is no specific imputation in the show cause notices with reference to the news items, however, it appears that the same has been taken into account while passing the impugned order. So is the case with report of chief officer. The petitioners hardly had any inkling about the same. Thus, the rules of natural justice do not appear to have been properly followed and observed and such a matter ought to be dealt with greater caution where unseating of elected councillors and the vice president is sought.

179. In judgment in the case of “*Ravi Yashwant Bhoir*” (*supra*) the court has observed that what natural justice requires is that party should have opportunity of adducing all relevant evidence.

180. Since petitioners have referred to Exhibit-N, it amounts to admission of guilt would be rather preemptive approach, for petitioners do not appear to have got an opportunity to deal with show cause notices and the material being considered against them, including the news papers reports, report by chief officer etc. which are referred to in the impugned order. In the circumstances, though submissions on behalf of respondent No. 5 are attractive and learned, yet in given facts and circumstances it is difficult to be persuaded by the same.

181. Observations by the authority that lodging of first information report and filing of charge sheet would tantamount to evidence about disgraceful act, it appears petitioners had not been given any idea about that the same being considered as evidence, enabling them to resist, deny, refute or meet with the same. Petitioners deserve an opportunity to deal with this aspect.

182. Sequence of events as it would emerge appears to be that a complaint / application had been lodged by Ganesh Laxman Waghmare – respondent No. 5, around 2nd / 3rd November, 2017 with reference to the incident dated 27th June, 2017 and some

procession of 15th June, 2017,. Subsequently, he appears to have moved high court in writ petition No. 880 of 2018 and an order came to be passed on 25th January, 2018 observing that respondent No. 1 to decide said pending proceedings, if not already decided, as expeditiously as possible, however, within three months from the date of the order, in accordance with law and after adhering to the principles of natural justice. The, collector, Beed appears to have sent a report in response to communication to him, in furtherance of application of respondent No. 5. Thereafter, on 28th March, 2018, notices came to be issued to the petitioners seeking explanation as to why they should not be disqualified for disgraceful acts committed on 27th June, 2017 referring to that collector has opined for an action, since there appears to be some substance in the complaint. Notices refer to having enclosed copy of report. Show cause notices have been served on the petitioners on 30th / 31st March, 2018 and at least two of the petitioners, while acknowledging receipt of notices, had endorsed on the same that they have not received collector's report.

183. Writ petition came to be filed against aforesaid show cause notices claiming the same to be outside jurisdiction and in abuse of process of law. Under the writ petition, it appears, petitioners purport to trace origin of the state of affairs resting with the present petition, to the election of the president of municipal council, Beed in 2016. It is being referred to that the elected president had been

holding the post for last thirty years. He is from Nationalist Congress Party. It is being claimed that he had been interested in getting elected vice president of said party. Petitioners have averred to the effect that report appended to notice had not been served.

184. The high court had passed an order on 13th April, 2018 not to give final decision and had not detained further proceedings pursuant to show cause notices, leaving it open for the petitioners to file reply. Albeit a clarification that reply should be by petitioners had come only on 20th April, 2018. By then, a notice for hearing of show cause notice had been issued on 19th April, 2018 and the same was served on the petitioners on 21st April, 2018. Petitioners thereon again had endorsed that requisite material has not been supplied to them and had demanded supply of the same in order to enable them to file proper response to the show cause notices. Once again on 24th April, 2018, before the authority, petitioners have filed application / representation that the matter is subjudice before high court and had requested to defer the proceedings, contending that the show cause notice is illegal.

185. While acknowledging receipt of notice dated 19th April, 2018, on 21st April, 2018, it has been specifically endorsed in writing by the petitioners that they are unable to appreciate what are exact charges against them and have not received any document and that for want of documents they are not in a position to respond to the

show cause notices. Petitioner No. 9 particularly has referred to that despite demand, the documents are not being supplied.

186. Before aforesaid, on 11th April, 2018, the petitioners had communicated in writing to respondent No. 1 that notice does not give clear idea as to what are charges framed against them and that no document viz., application and documents by respondent No. 5, report referred to in the notice have not been supplied along with the notice and those be supplied in order to enable them to file replies. Even before that, it appears on 6th April, 2018 there had been one application by Momin Azaruddin for supply of reports and complaint along with documents.

187. Learned advocate for the petitioners has submitted that record would depict that during pendency of writ petition some documents, including photo copies of newspaper extracts had been submitted by respondent No. 5 before respondent No. 1 along with a compact disc on 10th April, 2018. It does not appear to be a case that those were supplied to the petitioners. Petitioners all along had been submitting that for want of documents they are not in a position to submit reply to the show cause notice.

188. The order of high court putting restraint on the authority from taking final decision had continued up to 3rd May, 2018 and for some administrative difficulties, matter could not be entertained by the high court before commencement of vacation and the restraint

on taking decision had been considered to have been over from 3rd May, 2018. On 4th May, 2018, copies of reports and other material have been served on petitioners pursuant to a request. Impugned order dated 18th May, 2018 has been passed on Friday, served only on petitioner No. 8 in the evening on 19th May, 2018 around 7.00 p.m. Rest of the petitioners do not appear to have been served with orders on that day and 20th May, 2018 had been Sunday and 21st May, 2018 was the voting scheduled for Member of Legislative Council constituency.

189. According to the impugned order, decision ought to have been given by 23rd April, 2018, since there had been restraint on taking final decision, same could not be given till 3rd May, 2018. While the Hon'ble State Minister had considered that to avoid contempt of the order passed by division bench of this court on 25th January, 2018 in writ petition No. 880 of 2018, decision is being given, yet it emerges that decision had not come soon after restraint according to the respondents had been over on 3rd May, 2018 and it took about a fortnight for decision thereafter.

190. Impugned order refers to that after verifying all the documents on the basis of which show cause notice had been issued to the petitioners had been supplied to the concerned, thereafter, proceedings went on. Yet, it does not at all reflect upon as to where from the same has been ascertained or verified. The

order also does not reflect upon as to when those were supplied whether before 24th April, 2018 or on 24th April, 2018 and the manner in which documents are supplied and how the same had been verified and when, while petitioners on 11th April, and 21st April, 2018 had specifically referred to that for want of requisite material they are not in a position to file reply to the show cause notices.

191. It is to be noted that at least on two occasions petitioners have requested in writing for supply of documents / material once on 11th April, 2018 and again similar endorsements were made on notice for hearing served on 21st April, 2018 in order to enable them to file reply. While show cause notices initially were served on 30th / 31st March, 2018 there had been endorsements by two petitioners about non supply of documents, which were stated to be enclosed with the show cause notices. Record with respect to supply of documents on 4th May, 2018 had come in after 24th April, 2018. It is not clear as to when and how documents and demanded material had been supplied to the petitioners before 24th April, 2018. There does not appear to be any response to request and demands made on 11th April, 2018 and 21st April, 2018. It is not clear as to why no response is given to demands. Petitioners have been signing the notices received by them and endorsing that copies of report and other documents be supplied to them. This aspect has not been controverted.

192. It appears that some movement post 24th April, 2018 to supply documents had been made around 4th May, 2018, responding to demand made before the date of hearing.

193. Right from the beginning petitioners have been clamouring for copies of collector's report as well as the complaint and documents filed along with that, in order to enable them to file response to show cause notices. For want of the same, according to them, they were not in a position to give reply based only on the observations in show cause notice. It appears that the petitioners had not accepted accusations against them in the show cause notice. Their responses appear to be resisting the same.

194. In such a case, although it is being submitted that the observations by the *quasi* judicial authority with reference to facts need not be disputed, yet, observations in impugned order reflect upon that only those documents were supplied to the petitioners on the basis of which show cause notices had been issued. There is no reference to further documents filed by respondent No. 5.

195. Even if it is to be considered that copy of report of the collector was sought to be served on petitioners, yet, it emerges that the order also is deficient to reflect upon as to whether documents produced by respondent No. 4 in the month of April, 2018 had ever been made available to the petitioners.

196. Petitioners appear to have repeatedly asked for copies of reports and other documents in order to meet with the allegations with an effective explanation to show cause notices.

197. Events as would occur, show that till 24th April, 2018, petitioners were not given to understand and were not aware of writ petition No. 880 of 2018 or for that matter a direction in the same dated 25th January, 2018. It further appears that petitioners have become aware of such directions in writ petition No. 880 of 2018 on 24th April, 2018 on service of affidavit in very writ petition by respondent No. 5. Show cause notice does not refer to the order, has also not been controverted or disputed.

198. It appears that documents additionally submitted by respondent No. 5 during the proceedings and material therefrom has been relied on while passing impugned order. It does not appear from the proceedings that the petitioners had been given idea about the material being taken into account.

199. It has come on record that on number of occasions, petitioners went on demanding supply of documents and material and no response to the same appears to have been given before 4th May, 2018 and much less before scheduled date of hearing. Observation appearing in the impugned order in this respect is rendered vague and ambiguous in the given set of facts and

circumstances. It appears that even on 24th April, 2018, there had been application / representation requesting to defer the date, and it is contended that no order had been passed on the same. It is contended by the petitioners that they had no idea as to whether the proceedings are being heard or whether their application has been granted. It is contended that no further date in the matter had been given. It is complained by petitioners that they had not been heard in the proceeding.

200. Overall situation emerges that principles of natural justice are difficult to be considered to have been adhered to pursuant to directions given by division bench under its order dated 25th January, 2018 in writ petition No. 880 of 2018. While this is the situation in the present matter, it appears that fair play would require that an opportunity should be given to the petitioners to meet with the allegations against them and that the authority shall supply them material being relied on against them.

201. It may well have to be adverted to that for administrative reasons, high court could not hear the matter either on 3rd May, 2018 or on the next date before its closure for summer vacation. Petitioners can hardly be said to have control over the situation and to a large extent, the events that have taken place subsequently are claimed to have hampered them.

202. The impugned order does not suggest that the petitioners were supplied with all the documents and material which, fair and full play of principles of natural justice would require while petitioners were being proceeded against proposing their disqualification to occupy office which they have assumed upon election.

203. It is a case where it does not appear that the principles of natural justice have had full and fair play, which deserve to be given their due. A decision has been rendered, it appears, overlooking true spirit underlying the principles of natural justice.

204. Though there has been contention on behalf of respondents that doctrine of "*non traverse*" be invoked in present petition for not responding to show cause notices and filing reply, yet, one may have to take into account that the petitioners have all along been after the respondents to supply documents and material in order to enable them to effectively respond to the show cause notices. In the circumstances, it does not appear that said doctrine would have any role to play, since the petitioners purport to reason out their inability to respond to the show cause notice.

205. It appears that the collector had made a report pursuant to a communication from the government as per procedural instructions, which were in operation. The report, it appears, had been called from the collector in order to ascertain as to whether circumstances

warrant initiation of some proceeding. It appears to be a preliminary assessment before issuing show cause notice. It, thus, appears that contention by the petitioners about them having not been given opportunity before the collector would not be able to hold water.

206. While, power, authority and jurisdiction to issue show cause notice is questioned by petitioners and it being condemned as illegal and in abuse of process of law, there does not appear to be any substance in the same having regard to statutory provisions under sections 42, 55-A and 55-B of the MC Act. The provisions empower the authority to remove a councilor or for that matter vice president in the circumstances referred to therein. Those also provide for a reasonable opportunity be given to councilor / vice president. Having regard to the same, it cannot be said that the show cause notices issued would be without jurisdiction, authority or power or would be in abuse of process of law in present set of facts and circumstances. The request, therefore, under writ petition to issue writ of certiorari quashing show cause notices would not be indulged into and stands rejected.

207. Petitioners are democratically elected public representatives and it is being submitted that removal of an elected office bearer is a serious matter and proper opportunity is to be given; they would stand on a higher pedestal than a servant. Section 42 of the MC Act

or for that matter sections 55A and 55B of the MC Act stipulate opportunity should be given to persons concerned; while exercising power of removal, greater caution is expected and care is to be taken; procedure must be followed in its proper spirit; even standard of proof required is submitted has to be higher.

208. In the present proceedings despite there being demands, as referred to above often and at least on two occasions written demands, it would hardly be said that if at all documents are supposed to be given as observed under the impugned order, if that is during the period from 21st April, 2018 to 24th April, 2018, while writ petition had been pending and interim orders were operating, it would not be said that a proper and adequate opportunity has come the way of the petitioners to file a reply. Opportunity provided under statute shall be meaningfully adhered to and indeed would not be empty formality.

209. In the scenario, it appears to be that although observance of principles of natural justice has ostensibly been projected, yet it does not appear that it had really been followed in spirit.

210. Facts and circumstances, would not tantamount to an adequate opportunity to the petitioners. The impugned decision appears to have been taken rather hastily. The events, as those have occurred, give indication of that the proceedings have been dealt with haphazardly.

211. The situation, it appears, demands to have a fair play in the matter. An opportunity, that too a proper one, deserves to be made available to the petitioners, who are elected office bearers as representatives of people.

212. It emanates from the events that there is no consistency in the consideration and the action as referred to above. While, it had been observed by respondent No. 1 that decision ought to have been given on 23rd April, 2018, according to order passed in writ petition No. 880 of 2018 and that restraint granted by division bench of this court in present writ petition expired on 3rd May, 2018, yet, order is passed on 18th May, 2018.

213. Besides, it appears that in order to lend credibility and soundness to fair play and transparency in the matter, the petitioners deserve to be given an opportunity in the present facts and circumstances.

214. Eventually, the position emerges that while the elected office bearers are being prosecuted for his disqualification as referred to in the decisions relied on, on behalf of petitioners, the matter ought to have been dealt with, with greater caution and care as the disqualifying elected office bearer is considered to be serious matter having serious repercussions not only for the persons concerned but as well for the people who are represented through them.

215. Decisions relied on, on behalf of the petitioners about supply of material and following up of principles of natural justice and procedure and considerations as would be necessary to be attended to in proceedings against elected representatives in the circumstances, would hold sway in the present facts and circumstances.

216. As such, it would be in the fitness of things to relegate the parties to Hon'ble State Minister for re-consideration of the matter and the authority has to see that all the documents submitted, on behalf of respondent No. 5 are supplied to the petitioners.

217. Writ petition, therefore, partly succeeds. Impugned order dated 18th May, 2018 (Exhibit-S) passed by Hon'ble State Minister, Urban Development Department, Mantrayala, Mumbai, is quashed and set aside. Proceeding, pursuant to show cause notice is restored with the Hon'ble State Minister for consideration afresh.

Documents and material placed on record by respondent No. 5, appear to have been served on the petitioners, save the documents submitted in the month of April, 2018 supply of which to petitioners is not clear. The petitioners be served with the documents filed by respondent No. 5 in April, 2018, if not already supplied, within a period of ten days from the date of receipt of writ of this order at the end of respondent No. 1. Petitioners shall file

reply to the show cause notices and defence material, if any, within a period of ten days therefrom.

Thereafter, the Hon'ble State Minister may proceed with hearing of the proceeding and may decide the same expeditiously, preferably, within a period of thirty days from expiry of date of filing reply.

218. It is made clear that all the points are kept open for the parties, except challenge to show cause notices.

219. Rule is made absolute in aforesaid terms.

220. In view of disposal of writ petition, civil application No. 6359 of 2018 does not survive and stands disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-